

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

ORDER

November 24, 2014

**FORMAL CASE NO. 1121, IN THE MATTER OF THE APPLICATION OF THE
POTOMAC ELECTRIC POWER COMPANY FOR A FINANCING ORDER, Order No.
17714**

Before the Commission:

Betty Ann Kane, Chairman
Joanne Doddy Fort, Commissioner
Willie Lee Phillips, Commissioner

Appearances:

Peter E. Meier, Esq., Andrea H. Harper, Esq., Wendy E. Stark, Esq. and Dennis P. Jamouneau, Esq. for Potomac Electric Power Company; Frann G. Francis, Esq., W. Shaun Pharr, Esq., and Nicola Y. Whiteman, Esq. for Apartment & Office Building Association; Jennifer L. McClellan, Esq. for Verizon Washington, D.C., Inc.; Leonard E. Lucas, III, Esq. for the United States General Services Administration; Sandra Mattavous-Frye, Esq., Karen R. Sistrunk, Esq., John Michael Adragna, Esq., Travis R. Smith, Sr., Esq., Kevin J. Conoscenti, Esq., and McCarter & English LLC. for the Office of the People's Counsel; Brian R. Caldwell and Cheri Hance Staples for the District of Columbia Government by the Office of the Attorney General.

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I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants the Application of Potomac Electric Power Company (“Pepco” or “Applicant”) for a Financing Order under the Electric Company Infrastructure Improvement Financing Act of 2014 (“the Act,” or “ECIIFA”).¹ To facilitate compliance and consistency with applicable statutory provisions, this Financing Order adopts the definitions set forth in the Act except to the extent such terms are otherwise defined herein.

2. This Financing Order *inter alia*:

- (i) approves the issuance of the bonds defined in Section 101(3) of the Act by the District of Columbia (“the District”) and authorized by Section 202 of the Act (the “Bonds”) on the terms and conditions set forth in the Financing Order Application and directs the District to issue the Bonds in a single issuance as soon as reasonably practicable in order to lock in the historically low interest rates on the Bonds for the benefit of ratepayers, unless otherwise agreed to by the District and the Commission;²
- (ii) authorizes the imposition, charging, and collection on behalf of the District of the non-bypassable DDOT Underground Electric Company Infrastructure Improvement Charge (the “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 Residential Aid Discount (“RAD”) customer class or any succeeding discount program (“Customers”), to become effective upon the issuance of the Bonds;
- (iii) authorizes the adjustment of the DDOT Improvement Charge in accordance with Section 314 of the Act in amounts sufficient to pay the principal and interest on the Bonds and all other Financing Costs (described herein) on a timely basis;³
- (iv) authorizes the creation of the DDOT Underground Electric Company Infrastructure Improvement Property (the “DDOT Improvement Property”) in accordance with Section 301(a)(6) of the Act;⁴

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”).* The Commission notes that throughout the Financing Order Application, Pepco references sections of the ECIIFA; however, subsequent to the submission of the Financing Order Application, the Act was codified in the D.C. Code. Therefore, for continuity and ease of reference, we have footnoted any in text references to ECIIFA provisions with correlating citations to the D.C. Code.

² See D.C. Code §§ 34-1311.01(3) and 34-1312.02.

³ See D.C. Code § 34-1313.14.

- (v) finds and determines that the DDOT Underground Electric Company Infrastructure Improvement Activity (“DDOT Improvement Activity”) to be funded with the net proceeds of the Bonds is consistent with the Act;
- (vi) approves the form of, and authorizes the execution and delivery by Pepco of, a servicing agreement with the District providing for the billing, collection and servicing of the DDOT Improvement Charge and related services in accordance with the Act with modified Servicing Fees and Successor Servicing Fees; and
- (vii) finds that it is necessary for the Commission’s financial advisor to have an integral role with the District with respect to the structuring, marketing and pricing of the Bonds and that all matters relating to the structuring, marketing and pricing of the Bonds shall be determined by the District with input from the Commission’s financial advisor.⁵

II. BACKGROUND

3. Pursuant to Mayor’s Order 2012-130 (August 16, 2012),⁶ 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.”⁷ 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.⁸ 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 activities for undergrounding facilities to begin.⁹

4. Legislation governing the public-private partnership between 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, D.C. Bill 20-387, the “Electric Company Infrastructure Improvement Financing Act of 2013,” was introduced in the

⁴ See D.C. Code § 34-1313.01(a)(6).

⁵ See D.C. Code § 34-1313.03(g)(1) – The Commission is authorized to retain the services of a financial advisor to assist in its consideration of an application for a financing order, and in the **formulation and administration** of a financing order. (emphasis added).

⁶ Mayor’s Order 2012-130 was amended by Mayor’s Order 2012-182 (October 19, 2012).

⁷ Mayor’s Power Line Undergrounding Task Force Findings and Recommendations Final Report (October 2013) (the “Final Report”) at 8.

⁸ Final Report at 10.

⁹ Final Report at 9.

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, 2014.¹⁰

5. 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.

6. 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”).¹¹ In the Joint Application, Pepco and the DDOT requested, *inter alia*, (a) authority to implement a project to expand the undergrounding of certain electric distribution feeders in the District of Columbia (the “Undergrounding Project”) to increase the reliability of the electric distribution system in the District of Columbia, to commence with the first three years of the Undergrounding Project (2015-2017), and (b) approval of the Underground Project Charge (“UPC”) to be charged by Pepco with respect to Electric Company Infrastructure Improvement Costs incurred for the Undergrounding Project. The entire Undergrounding Project is expected to extend for a period of 7-10 years at a total cost of approximately \$1 billion.

7. 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.

8. 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 (“Application” or the “Financing Order Application”).¹² The Financing Order Application seeks 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.¹³ The Financing Order Application contemplates that the Bonds would be issued through a securitization structure described more fully herein (the “Securitization”) that will finance the costs of the DDOT Improvement Activity. The Financing Order, Application also requested that the Commission approve and adopt the proposed Financing Order included at Tab 6 of the Financing Order Application, in its entirety and without substantial modification, as the full and final resolution of the issues raised in this proceeding.

¹⁰ D.C. Law 20-102 (May 3, 2014).

¹¹ See D.C. Code § 34-1313.07(a).

¹² See D.C. Code § 34-1313.02(b).

¹³ See D.C. Code § 34-1312.02(a).

9. The Commission published notice to the public of the Financing Order Application on August 8, 2104, in the *D.C. Register*.¹⁴ On August 22, 2014, the Commission opened this proceeding and adopted a discovery schedule which allowed parties to offer any protests or objections to Pepco's financing application¹⁵ as well as submit a request for an evidentiary hearing, which was to include a statement that there are contested issues of material fact requiring a hearing and identify those issues with specificity.¹⁶ We granted petitions to intervene filed by the Apartment and Office Building Association of Metropolitan Washington ("AOBA");¹⁷ the United States General Services Administration ("GSA");¹⁸ and Verizon Washington, DC Inc. ("Verizon").¹⁹ The ECIIFA gives party of right status to the electric company (Pepco), the District, DDOT, and the Office of the People's Counsel ("OPC" or "Office").²⁰

10. On August 25, 2014, Pepco identified certain errata to the filing.²¹ On August 26, 2014, in accordance with Order No. 17601, representatives from Pepco and the District met with representatives from OPC, AOBA, and GSA to review the filed Application and to allow OPC, AOBA, and GSA to ask questions about the Application.²² On September 15, 2014, Verizon filed Comments.²³ On October 9, 2014, OPC filed a Protest and Request for Evidentiary Hearing including a statement that there are contested issues of material fact to be addressed in a hearing.²⁴ OPC identified three (3) issues of material fact but sought an evidentiary hearing on only one of the issues (*i.e.*, the just and reasonableness of Pepco's proposed Servicing Fee). On the same date, AOBA filed its Protest and Objections and the Testimony of Bruce R. Oliver

¹⁴ See 61 *D.C. Register* 8191-8194 (August 8, 2014).

¹⁵ *Formal Case No. 1121*, Order No. 17601 at ¶ 10, rel. August 22, 2014 ("Order No. 17601").

¹⁶ Order No. 17601 at ¶¶ 5-6.

¹⁷ Order No. 17601 at ¶ 11.

¹⁸ Order No. 17601 at ¶ 11.

¹⁹ *Formal Case No. 1121*, Order No. 17685 at ¶ 10, rel. October 27, 2014.

²⁰ See D.C. Code §§ 34-1313.03(a)(2) and 1313.09(a)(2).

²¹ *Formal Case No. 1121*, *Formal Case No. 1121*, Pepco's Errata to its Application for Issuance of a Financing Order, filed August 25, 2014.

²² *Formal Case No. 1121*, Presentation – Summary of Financing Application, filed August 27, 2014.

²³ *Formal Case No. 1121 and Formal Case No. 1116*, *In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan* ("Formal Case No. 1116") ("Formal Case Nos. 1116 and 1121"), Comments of Verizon Washington, DC Inc. ("Verizon Comments"), filed September 15, 2014.

²⁴ *Formal Case No. 1121*, Protest of the Office of the People's Counsel and Request for Evidentiary Hearing ("OPC Protest"), filed October 9, 2014. On October 10, 2014, OPC filed an Errata to exhibit OPC(A)-1 and Exhibit OPC(A)-2 of the OPC Protest.

(“Oliver”) responding to the Financing Order Application,²⁵ GSA also filed a Protest and Objections.²⁶ Neither AOBA nor GSA requested an evidentiary hearing.

11. By Order No. 17682, the Commission denied OPC’s request for an evidentiary hearing on the just and reasonableness of the proposed servicing fees to be paid to Pepco. The Commission held that it will consider and decide all of the Protests and Comments of the Parties, as well as Pepco’s request for a financing order based on the pleadings in the record.²⁷

12. 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 Infrastructure Improvement Costs incurred for the Undergrounding Project.²⁸

III. STATUTORY OVERVIEW

13. The ECIIFA, *inter alia*, authorizes the funding of the undergrounding of certain vulnerable feeders in the District of Columbia and the establishment of a mechanism by which the Undergrounding Project will be funded. In Order No. 17697, the Commission addressed the funding of the activities to be undertaken by Pepco with respect to the Electric Company Infrastructure Improvement Costs. This Financing Order focuses on the financing of the Undergrounding Project activities to be undertaken by DDOT through the securitization of a non-bypassable volumetric surcharge imposed on all non-RAD customers.²⁹

A. ECIIFA Required Commission Financing Order Findings

i. Section 301

14. Section 301(a) of the Act states that the Commission shall issue a financing order that shall, among its other provisions:³⁰

- (1) Specify the maximum amount of Bonds that are authorized for issuance, the amount not to exceed the limitations set forth in the Act;
- (2) Describe the DDOT Underground Electric Infrastructure Improvement Activities

²⁵ *Formal Case No. 1121*, Protest and Objection to the Application of Pepco for Issuance of a Bond Financing Order of the Apartment and Office Building Association of Metropolitan Washington (“AOBA Protest”), filed October 9, 2014.

²⁶ *Formal Case No. 1121*, United States General Services Administration’s Protest and Objections (“GSA Protest”), filed October 9, 2014.

²⁷ *See Formal Case No. 1121*, Order No. 17682, rel. October 24, 2014.

²⁸ *Formal Case No. 1116*, Order No. 17697, rel. November 12, 2014.

²⁹ *See generally*, D.C. Code § 34-1312.02.

³⁰ *See* D.C. Code § 34-1313.01(a).

- to be paid through the issuance of the Bonds and recovered through DDOT Underground Electric Company Infrastructure Improvement Charges;
- (3) Specify the qualitative or quantitative limitations on financing costs to be recovered (not to impair the ability to pay and service the Bonds in accordance with their terms);
 - (4) Assess DDOT Underground Electric Company Infrastructure Improvement Charges among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the most recent base rate case; provided, that no such charges shall be assessed against the electric company's residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class. DDOT Underground Electric Company Infrastructure Improvement Charges shall be billed to customers by the electric company as a volumetric surcharge;
 - (5) Describe the true-up mechanism to reconcile actual collections of DDOT Underground Electric Company Infrastructure Improvement Charges with forecasted collection on at least an annual basis to ensure that the collections of DDOT Underground Electric Company Infrastructure Improvement Charges are adequate to pay debt service on the associated Bonds when due pursuant to the expected amortization schedule, to fund all debt service reserve accounts to the required levels, and to pay when due all other expected ongoing financing costs as provided in Section 314;³¹
 - (6) Authorize the creation of the DDOT Underground Electric Company Infrastructure Improvement Property;
 - (7) Authorize the imposition, billing, and collection of DDOT Underground Electric Company Infrastructure Improvement Charges to pay debt service on the Bonds and other ongoing financing costs;
 - (8) Describe the DDOT Underground Electric Company Infrastructure Improvement Property that will be created and that may be used to pay and secure the payment of the debt service of the Bonds and other ongoing financing costs;
 - (9) Authorize the execution and delivery of one or more servicing or collection agreements with the applicant electric company, including, without limitation, provisions for fixing the servicing fee, arrangements for an alternate servicer of the DDOT Underground Electric Company Infrastructure Improvement Charges, requiring the electric company to collect and remit the resulting DDOT Underground Electric Company Infrastructure Improvement Charges in its entirety to the trustee, as provided in Section 201,³² and requiring that any

³¹ See D.C. Code § 34-1313.14.

³² See D.C. Code § 34-1312.01.

successor to the electric company shall perform and satisfy all obligations of the electric company under the servicing agreement and the pertinent financing order in the same manner and to the same extent as the electric company, including collecting and paying to the person entitled to receive the revenues, collections, payments, or proceeds of the DDOT Underground Electric Company Infrastructure Improvement Charge;

- (10) Prescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure Improvement Charges; and
- (11) Contain such other findings, determinations, and authorizations as the Commission shall consider appropriate.

15. Section 301(b) requires that all financing orders are to be operative and in full force and effect from the time fixed for them to become effective by the Commission.³³ Section 301(c) requires that the Financing Order provide that, except to implement any true-up mechanism as provided in Section 314, the Commission may not amend, modify, or terminate the financing order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust the DDOT Underground Electric Company Infrastructure Improvement Charges approved in the financing order. Finally, the Commission's financing order shall provide that the electric company shall collect and remit to the trustee payments received by the electric company for the DDOT Underground Electric Company Infrastructure Improvement Revenue promptly following receipt of such payment in accordance with the servicing agreement.³⁴

B. ECIIFA Required Financing Order Application Content

16. Section 302 of the Act sets forth the requirements of the Application for this Financing Order, and all subsequent applications for a financing order, which according to the Act must contain: (1) a statement from the District containing a description of the Bond issue or issues, including the principal amount or amounts, expected financing costs, expected interest rate or rates, forecasted average term and retirement schedule, and estimates of the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement that will enable the District to pay the debt service and financing costs associated with Bonds issued pursuant to the Act; (2) a calculation by the electric company of the estimated DDOT Underground Electric Company Infrastructure Improvement Charges, the level of the expected charge by distribution service customer class, and the calculated amount estimated to be sufficient to generate an amount at least equal to the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement as provided by the District; (3) a proposed form of the servicing agreement between the District, the electric company, and the Trustee; (4) the proposed methodology for allocating DDOT Underground Electric Company Infrastructure Improvement Charges among the electric company's distribution service customer classes subject to that allocation; and (5) a proposed form of public notice of the application

³³ See D.C. Code § 34-1313.01(b).

³⁴ See D.C. Code §§ 34-1312.01(c) and 1313.14.

suitable for publication by the Commission.³⁵

C. Other ECIIFA Requirements

i. Sections 101(13) and 305(c)

17. Sections 101(13) and 305(c) of the Act require that the DDOT Improvement Charge be a “non-bypassable, adjusting surcharge” authorized by the Act and the Commission in this Financing Order, which must “apply to all of the electric company’s customers located within the District and receiving electric distribution service,” as provided in Section 101(a)(4) of the Act.³⁶

ii. Section 201(d)

18. Section 201(d) of the Act prescribes that the “trustee shall receive, hold, and invest the DDOT Underground Electric Company Infrastructure Improvement Revenue and shall deposit all such revenues upon receipt into the DDOT Underground Electric Company Infrastructure Improvement Fund to be held, invested, and used as specified in the financing documents and this chapter.”³⁷

iii. Section 202

19. Sections 202 and 209 of the Act states “the Council approves and authorizes the issuance of one or more series of Bonds in a total principal amount not to exceed \$375 million” and that the “the proceeds of the Bonds shall be used . . . to pay or reimburse DDOT Underground Electric Company Infrastructure Improvement Costs; provided, that no bond proceeds shall be provided to DDOT pursuant to this chapter until the Commission shall have first approved the Underground Infrastructure Improvement Projects Plan.”³⁸

iv. Section 203

20. Section 203 of the Act requires that the Bonds be secured by and payable from the DDOT Improvement Property, an irrevocable property right, created in the District, which includes: (i) the right to impose, bill and collect DDOT Improvement Charges, (ii) the right to adjust the DDOT Improvement Charge pursuant to a “true-up mechanism” in accordance with Section 314 of the Act, and (iii) all proceeds and revenues from the DDOT Improvement Charge (DDOT Underground Electric Company Infrastructure Improvement Revenues, or herein,

³⁵ See D.C. Code § 34-1312.02.

³⁶ See D.C. Code §§ 34-1311.01(13) and 1313.05(c).

³⁷ See D.C. Code § 34-1312.01(d).

³⁸ See D.C. Code §§ 34-1312.02(a)-(b)(2).

“DDOT Improvement Revenue”).³⁹

v. *Section 204(h)*

21. Section 204(h) of the Act requires that the District covenant and agree “that it will not limit or alter the DDOT Underground Electric Company Infrastructure Improvement Revenue pledged to secure the Bonds or the basis on which the DDOT Underground Electric Company Infrastructure Improvement Revenue is collected or allocated, will not take any action to impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, and will not in any way impair the rights or remedies of the holders of the Bonds, until the Bonds, together with interest on the Bonds, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the Bonds, are fully met and discharged. This covenant and agreement of the District shall be included as part of the contract between the District and the holders of the Bonds.”⁴⁰

vi. *Section 209*

22. Section 209 of the Act requires that “all DDOT Underground Electric Company Infrastructure Improvement Charges shall continue to be collected until the Bonds have been paid in full and financing costs related to the Bonds have been paid in full.”⁴¹

vii. *Section 303(d)*

23. Section 303(d) of the Act requires the District to “file an issuance advice letter with the Commission by 5:00 p.m. on the next business day after the sale of Bonds authorized by the Commission pursuant to a financing order. The issuance advice letter shall describe the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement for the Bonds issued pursuant to the financing order, the average term, and the retirement schedules. If the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue, based on the information in the issuance advice letter, is less than the estimated DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement in the related financing order, the Commission shall adjust the DDOT Underground Electric Company Infrastructure Improvement Charges.”⁴²

viii. *Section 314*

24. Section 314 of the Act requires that a “true-up mechanism” be used to adjust the DDOT Improvement Charge not less frequently than annually to ensure the amount projected to be collected and remitted satisfy the DDOT Underground Electric Company Infrastructure

³⁹ See D.C. Code § 34-1312.03.

⁴⁰ See D.C. Code § 34-1312.04(h).

⁴¹ See D.C. Code §§ 34-1312.02 and 1312.09.

⁴² See D.C. Code § 34-1313.03(d).

Improvement Annual Revenue Requirement (“DDOT Improvement Revenue Requirement”), which includes an amount sufficient to pay the principal of and interest on the Bonds when due pursuant to the expected amortization schedule, to replenish any reserve funds created for the Bonds to their required level, and to pay any other Ongoing Financing Costs (as described herein).⁴³

IV. SUMMARY OF PARTIES’ POSITION ON CONTESTED ISSUES

A. Pepco’s Position

25. Pepco’s application for issuance of a Financing Order under the Act (the “Application” or the “Financing Order Application”) authorizes the District to issue up to \$375 million in bonds and approves a surcharge to cover the repayment of bonds and ongoing financing costs. The Application also includes a form of the Servicing Agreement pursuant to which Pepco will collect the surcharge from Customers and forward it to the Bond Trustee.⁴⁴

26. According to Pepco, bonds issued through a securitization structure have been successfully issued in many states as an element of electric utility industry restructuring and also to achieve important utility industry public policy objectives.⁴⁵ Pepco asserts that all securitization bonds have common structural and security features.⁴⁶ Important common elements include: the securitization bonds are authorized by special legislation and a final non-appealable “financing order” issued by a public service commission; the securitization bonds are secured by a property right, consisting of the right to impose and collect a non-bypassable charge imposed upon utility customers, which charge is subject to adjustment from time to time to assure the timely payment of debt service on the securitization bonds and related financing costs; and the agreement of the applicable State not to take any action which would impair the property rights of the bondholders.⁴⁷ All except one securitization bond has achieved “AAA” or equivalent credit ratings. Further, Pepco notes that securitization bond offerings have been issued by special purpose affiliates of investor-owned utilities as well as public issuers with similar success.⁴⁸

27. According to Pepco, once the Financing Order is approved by the Commission, the DDOT Improvement Charge is irrevocable, pursuant to Section 301(c) of the Act.⁴⁹ The

⁴³ See generally, D.C. Code § 34-1313.14.

⁴⁴ *Formal Case No. 1121*, Application of Potomac Electric Power Company for Issuance of a Financing Order (“Application”), filed August 1, 2014.

⁴⁵ Application at 5.

⁴⁶ Application at 5.

⁴⁷ Application at 5.

⁴⁸ Application at 5-6.

⁴⁹ See D.C. Code § 1313.01(c).

DDOT Improvement Charge will be a non-bypassable, volumetric surcharge applicable to all of Pepco's distribution service customers within the District of Columbia, other than members of the RAD customer class or any succeeding discount customer class.⁵⁰ Pepco explains that the DDOT Improvement Property is the asset underlying the Bonds and represents the District's right, title and interest in and to the DDOT Improvement Charge as well as all revenues, collections, claims, payments, money, or proceeds of or arising from the DDOT Improvement Charge.⁵¹ The District will issue and sell the Bonds, which will be payable from the DDOT Underground Electric Company Infrastructure Improvement Revenue. Pepco asserts that the proceeds from the sale of the Bonds, net of any Upfront Financing Costs, will be remitted to a trustee and held in the DDOT Underground Electric Company Infrastructure Improvement Fund to fund the DDOT Improvement Activities approved by the Commission in the Financing Order.⁵² According to Pepco, the DDOT Improvement Charge will be periodically adjusted, up or down, pursuant to the true-up adjustment mechanism to be approved in the Financing Order in accordance with Section 314 of the Act.⁵³

28. Pepco notes that Section 302(b) of the Act establishes certain information that is required to be set forth in any application for a financing order.⁵⁴ Pepco asserts that the Application and the exhibits filed in support thereof are in full compliance with the requirements of the Act. However, Pepco notes that in the event the Commission determines that the Application fails to conform in any respect to the Act's requirements for such an application, Pepco requests a reasonable opportunity to supplement the Application with the required, responsive information.⁵⁵

29. According to Pepco, pursuant to Section 401(a) of the Act, the costs to be incurred by the Commission and OPC in connection with this Application are recoverable in accordance with Section 34-912 of the District of Columbia Official Code.⁵⁶ Pepco asserts that the Application and the exhibits filed in support thereof are in full compliance with each of the Commission's filing requirements and precedential directives. However, Pepco requests that, in the event the Commission determines that the Company has failed to conform in any respect to the filing requirements of the Commission's Rules or Orders, the Commission grant Pepco a waiver of such filing requirements, pursuant to Commission Rule 146.1.⁵⁷

⁵⁰ Application at 6-7.

⁵¹ Application at 7.

⁵² Application at 7.

⁵³ Application at 6-7 (*See* D.C. Code § 34-1313.14).

⁵⁴ *See* D.C. Code § 34-1313.02(b).

⁵⁵ Application at 8-9.

⁵⁶ *See* D.C. Code § 34-1314.01(a).

⁵⁷ Application at 10-11.

30. Pepco notes that the Act requires that the Commission include certain provisions in any financing order. Pepco claims that set forth at Tab 6 of the Financing Order Application is a draft of a proposed form of Financing Order which, as discussed in the testimony of Pepco witness McGowan, incorporates all the elements required by the Act for the contents of a Financing Order. Pepco requests that the Commission issue the Financing Order in the form attached at Tab 6 without change to its substantive provisions.⁵⁸

31. Pepco concludes by urging the Commission to grant the Financing Order Application and approve the Financing Order requested, which authorizes the creation of the DDOT Improvement Property and the imposition, billing, and collection of the DDOT Improvement Charge.⁵⁹

B. OPC's Protest

32. OPC's Protest identifies three (3) issues of what it contends are issues of material fact: (1) whether it is just and reasonable to issue the full \$375 million in bonds authorized under the Act in a single issuance; (2) whether the proposed Servicing Fees to be paid to Pepco in the Servicing Agreement are just and reasonable; and (3) whether the DDOT Improvement Charge has been properly allocated in accordance with the Act.⁶⁰ While OPC identified three issues of material fact, it only requested a hearing on the issue of the appropriateness of Pepco's proposed Servicing Fee. By Order No. 17682, we determined OPC's second issue regarding the reasonableness of the proposed servicing fee is not an issue of fact and would not require a hearing to resolve.⁶¹ OPC conceded that its first and third issues do not require a hearing.⁶² Therefore, based on our decision in Order No. 17682 and OPC's concessions, we set out OPC's three contentions regarding the Financial Order Application below and decide the issues in Section VI, *infra*, based on information on the record.

i. The Structure of the Proposed Bond Issuance Requires Further Scrutiny

33. OPC raises several arguments to support its position that the structure of the proposed bond issuance requires further scrutiny.⁶³ OPC argues first that the Commission should require further explanation of the decision to issue all of the bonds in one issuance.⁶⁴ According to OPC, under the current financing plan, District ratepayers will begin paying for all

⁵⁸ Application at 11-13.

⁵⁹ *Formal Case No. 1121*, Application at 15.

⁶⁰ OPC Protest at 3.

⁶¹ *Formal Case No. 1121*, Order No. 17682 at ¶ 29. "Although OPC clearly disagrees with Pepco on the Service Fee issue, the reasonableness of the proposed fee is a matter of opinion rather than an issue of fact."

⁶² OPC Protest at 3, 4.

⁶³ OPC Protest at 3.

⁶⁴ OPC Protest at 5.

of the bond financing costs in 2015, but DDOT construction will continue through 2022. Moreover, OPC asserts, it appears that DDOT may be proposing to pre-fund construction cost such that the difference DDOT will earn on the unexpended funds and the interest rate DDOT will pay on the bonds would create a negative arbitrage situation for ratepayers.⁶⁵ OPC cites the conclusion of its consultant, Saber Partners, LLC's ("Saber"), that this impact will cost ratepayers approximately \$31 million over seven (7) years.⁶⁶ Saber also concluded that there is significant precedent for multiple bond issuances in utility securitizations used for construction of hard assets as opposed to stranded costs. OPC argues that a single issuance may cause the District to use less tax-exempt financing than it would otherwise be allowed under federal tax law - which, in turn, would materially increase the overall cost to ratepayers.⁶⁷ OPC further asserts that many of its concerns could be avoided through the use of properly timed multiple bond issuances; since the potential cost saving to consumers from tax-free financing could be significant.⁶⁸ OPC emphasizes that the District should justify its stated preference for a single issuance in light of the potentially significant ratepayer benefits that could be derived from a multiple-issuance approach. Inasmuch as there is no explanation and supporting analyses for the selection of a single issuance, OPC urges the Commission to require such an explanation and analysis so that the Commission can make an informed decision as to whether the District's stated preference to issue all of the bonds in a single issuance has been justified and whether the resulting DDOT Improvement Charge is just and reasonable and in accordance with Section 303(c) of the Act.⁶⁹

ii. *The Level of Pepco's Proposed Servicing Fee Has Not Been Shown to be Just and Reasonable*

34. OPC argues that the level of Pepco's proposed Servicing Fee has not been shown to be just and reasonable. According to OPC, under the proposed Servicing Agreement, Pepco will be paid a 0.075% or 7.5 basis points Servicing Fee to serve as Servicing Agent on behalf of the District for the Bonds, which will eventually be paid by District ratepayers through the DDOT Improvement Charge.⁷⁰ OPC asserts, however, that it is impossible for the Commission to determine whether the proposed level of the Servicing Fee to be paid to Pepco is reasonable; therefore, OPC asserts that a Commission authorized Servicing Fee must be based upon the Company's incremental costs of providing the service under the Servicing Agreement and include a mechanism for returning to ratepayers any amounts above the Company's actual incremental costs of providing that service.⁷¹ Further, OPC asserts that it is impossible for the

⁶⁵ OPC Protest at 6.

⁶⁶ OPC Protest at 6.

⁶⁷ OPC Protest at 7.

⁶⁸ OPC Protest at 7.

⁶⁹ OPC Protest at 7-8 (*See* D.C. Code § 1313.03(c)).

⁷⁰ OPC Protest at 8.

⁷¹ OPC Protest at 8-9.

Commission to determine whether the proposed Servicing Fee will over-compensate the Company for performing its obligations under the Servicing Agreement because Pepco “has not calculated the incremental costs to performing [its duties under the Servicing Agreement].”⁷²

35. OPC asserts that, according to Saber, Pepco’s attempt to justify the 7.5 basis point fee by reference to other servicing fees is unpersuasive because it fails to take into account the terms and conditions surrounding the nominal servicing fee of those transactions that render those examples inapposite. Further, OPC expresses concern that Pepco’s proposed Servicing Fee level is heightened by the fact that there is no mechanism in the Servicing Agreement to compensate ratepayers to the extent that the Servicing Fee paid to Pepco proves to be greater than its incremental costs.⁷³ Saber concludes that “both Pepco’s Exhibit A and the District’s Exhibit DC A-5 fail to account for refunds, rebates, or credits due to ratepayers based on servicing fees earned in excess of a utility’s incremental costs. Therefore, OPC asserts, the list of servicing fees supplied by Pepco (*i.e.*, Exhibit A) includes rates that are much higher than the effective rates (*i.e.*, the nominal fee less refunds, rebates, and credits), actually earned in those cases because the list they presented does not disclose rebates and credits related to those rates imposed by the utility regulator.”⁷⁴

36. OPC recommends that the Commission require that the Servicing Agreement be modified to: (1) reduce the Servicing Fee received by Pepco to a just and reasonable level consistent with Pepco’s expected incremental costs; (2) include a mechanism to compensate ratepayers to the extent the Servicing Fee paid to Pepco proves to be greater than the incremental costs actually incurred by the Company; and (3) direct Pepco to submit a compliance filing in this proceeding setting forth (in detail) the incremental costs it will incur in the execution of its functions as a Servicing Agent.⁷⁵

iii. Pepco’s Proposed Cost Allocation is Consistent with the Act

37. OPC argues that Pepco’s proposed cost allocation is consistent with Section 301(a)(4) of the Act which provides that any financing order shall “assess DDOT Underground Electric Company Infrastructure Improvement Charges among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations by the Commission for the electric company and in effect pursuant to the electric company’s most recent base rate case.”⁷⁶ OPC recognizes that, the Act provides that no Underground Electric Company Infrastructure Improvement Charges shall be assessed against customers served under the RAD rate. OPC contends that the provisions governing the cost

⁷² OPC Protest at 8-9.

⁷³ OPC Protest at 10.

⁷⁴ OPC Protest at 10-11.

⁷⁵ OPC Protest at 9-11.

⁷⁶ OPC Protest at 12 (*See* D.C. Code § 34-1313.01(a)(4)).

allocation of the DDOT Improvement Charge are, in all material respects, identical to the provisions governing the allocation of the Underground Project Charge (“UPC”), which the Commission considered in *Formal Case No. 1116*.⁷⁷ For the same reasons discussed in OPC’s Protest; OPC’s 10-Day, Post Discovery Pleading; and OPC’s Post-Hearing Brief filed *Formal Case No. 1116*, OPC believes that Pepco’s allocation of the DDOT Improvement Charge is consistent with the requirements of the Act.⁷⁸ OPC submits that the outcome of the hearing in *Formal Case No. 1116* should apply with equal force to the interpretation of Section 301(a)(4) of the Act in this proceeding.⁷⁹ Accordingly, for the reasons put forth by the Office in *Formal Case No. 1116*, OPC believes that the legislative history of the Act plainly supports a finding that its drafters intended to allocate the UPC and the DDOT Improvement Charge exactly as proposed by Pepco, on the basis of non-customer revenue.⁸⁰ OPC asserts that the Task Force Report is significant (which, as the Commission found in Order No. 17627, is a critical part of the legislative history of the Act) and contained an estimate that the monthly bill impact on residential customers resulting from the Act in Year 1 of the underground process would be approximately \$1.50.⁸¹ OPC witness Smith stated that when the UPC and the DDOT Improvement Charges are allocated on the basis of non-customer charge revenues, the total proposed monthly bill impact for the average residential customer using 750 kilowatt hours would be \$1.54.⁸² In contrast, Mr. Smith concluded that if the UPC and DDOT Improvement Charge are allocated on the basis of the total revenues in *Formal Case No. 1103*, the resulting monthly bill impact for the average residential customer would be \$2.83.⁸³ OPC argues that the significant deviation from the estimates reflected in the Task Force Report serve as strong evidence that the intent of the Act’s drafters was to allocate the DDOT Improvement Charge on the basis of non-customer revenues from *Formal Case No. 1103*.⁸⁴ OPC, therefore, concludes that the Commission should find that the DDOT Improvement Charge has been properly allocated by Pepco in the Financing Order Application.⁸⁵

38. OPC requests that the Commission rule: (1) that a single issuance cannot be used unless and until the explanation and analyses the Office requested in its Protest are provided by the District (through Pepco) and the Commission concludes that such a single issuance would be in the public interest; (2) that Pepco’s proposed Servicing Fee is not just and reasonable; and (3)

⁷⁷ OPC Protest at 12.

⁷⁸ OPC Protest at 13-14.

⁷⁹ See D.C. Code § 1313.01(a)(4).

⁸⁰ OPC Protest at 14-15.

⁸¹ OPC Protest at 15.

⁸² OPC Protest at 15.

⁸³ OPC Protest at 15.

⁸⁴ OPC Protest at 15.

⁸⁵ OPC Protest at 15.

that Pepco's proposed allocation of the DDOT Improvement Charge is consistent with the Act.⁸⁶

C. AOBA's Protests and Objections

i. *Statutory Construction and Legal Standards for Implementing the ECIIFA*

39. AOBA argues that Pepco, as the proponent for the Financing Order, has failed to meet its burden of proof in demonstrating the basis for the Commission's approval of its proposed bond financing order.⁸⁷ AOBA argues that the issues associated with the allocation of revenue requirements among rate classes in this proceeding are parallel to those litigated in *Formal Case No. 1116*, which were also the subject of a formal hearing in that proceeding.⁸⁸ AOBA indicates that the legal arguments on statutory construction and implementation of the ECIIFA that it included in its *Formal Case No. 1116* Protest, and which constitute a contested issue of material fact in this proceeding, are incorporated by reference in the AOBA Protest in this proceeding.⁸⁹

ii. *Deficiencies in the Financing Order Application*

40. AOBA argues that Pepco's filings contain critical deficiencies constituting contested issues of material fact that must be corrected before the Commission approves the bond financing order required by the ECIIFA. AOBA identifies the deficiencies, as more fully described in the Direct Testimony of AOBA witness Bruce R. Oliver, to include: (1) errors in the Company's determination of the class revenue requirement stemming from (a) the proposed DDOT Improvement Charge not being computed in accordance with the Act, (b) the Company's failure to create a separate DDOT Improvement Charge for Master Metered Apartments ("MMA"), and (c) the Company's erroneous use of forecasted sales data instead of actual 2012 test-year sales data and inappropriate use forecasted kWh adjusted for billing lag to calculate the DDOT Improvement Charge; (2) Pepco's failure to ensure that the proposed surcharges are non-bypassable in accordance with the Act; (3) the Company's proposed Servicing Fee is inappropriately high and, therefore, not just and reasonable as required by the Act; and (4) the Company's proposed timing and issuance of the Bonds is inappropriate.⁹⁰

⁸⁶ OPC Protest at 16.

⁸⁷ AOBA Protest at 3.

⁸⁸ See *Formal Case No. 1116*, Order No. 17627, ¶ 88 (granting AOBA's request for an evidentiary hearing on the cost allocation issue).

⁸⁹ AOBA Protest at 3. For a full discussion of AOBA's arguments on the statutory construction and legal standards of the Act as they relate to the issue of cost allocation see *Formal Case No. 1116*, Order No. 17697, ¶¶ 47-51.

⁹⁰ See generally, AOBA Protest.

a. Errors in the Company's Determination of the Class Revenue Requirements

41. AOBA argues that the Financing Order Application contains errors in the Company's determination of class revenue requirements. Specifically, AOBA asserts that the class revenue requirement is inaccurate because: (1) the proposed DDOT Improvement Charge is not computed in accordance with the Act; (2) Pepco did not create a separate DDOT Improvement Charge for MMA customers; and (3) Pepco inappropriately used forecasted sales data in its measures of kWh by rate class and inappropriately used forecasted kWh adjusted for billing lag in its calculation of the DDOT Improvement Charge.⁹¹

1. DDOT Improvement Charge does not Comply with the Act

42. AOBA's contentions regarding the cost allocation methodology underlying the DDOT Improvement Charge are substantially the same arguments it submitted in *Formal Case No. 1116* regarding the cost allocation underlying Pepco's UPC. AOBA's arguments on this point were fully considered and discussed in Order No. 17697, ¶¶ 47-51. Generally, AOBA reiterates, in this proceeding, through the testimony of its witness Oliver, that the proposed DDOT Improvement Charge is not computed in accordance with the requirements of the Act⁹² because Pepco allocates the DDOT Improvement Revenue Requirement "to each rate class on the basis of the rate class specific levels of **non-customer related distribution revenue**, as approved" in *Formal Case No. 1103*, as opposed to allocating costs based on Pepco's last class cost of service study ("CCOSS") submitted in *Formal Case No. 1103*, which AOBA argues complies with the Act's "**distribution service customer class cost allocations**" language.⁹³

43. While the arguments underlying AOBA's contention that Pepco inappropriately allocated costs to the DDOT Improvement Charge remained the same as those submitted by AOBA in *Formal Case No. 1116*, AOBA changed its proposed allocation of the total revenue requirement to the residential sector in its *Formal Case No. 1121* Protest to 27%, while in *Formal Case No. 1116* AOBA recommended that 47% of the UPC be allocated to residential customers.⁹⁴ This 27% reallocation represents the summation of the CCOSS primary demand allocator for R, AE, RTM, and MMA classes (R and AE = 23.10%, RTM = 0.24% and MMA = 3.37%). According to AOBA, the costs that are to be included in DDOT Improvement Charge Revenue Requirement will be primarily associated with the construction of primary distribution underground conduit and, therefore, these costs should be based on Pepco's "NCAPPRIM" (*i.e.*, primary distribution non-coincident area peak) allocator in *Formal Case No. 1103*.⁹⁵ AOBA

⁹¹ AOBA Protest at 3.

⁹² AOBA Protest, Witness Oliver Testimony at 5.

⁹³ AOBA Protest, Witness Oliver Testimony at 13-14 (citing Pepco Exhibit (C), page 4 lines 10-13) (internal quotations omitted).

⁹⁴ AOBA Protest, Witness Oliver Testimony at 26, Table 2. *See also*, Order No. 17697, ¶ 183.

⁹⁵ AOBA Protest, Witness Oliver Testimony at 22.

cites *Formal Case No. 1103* witness Nagel's testimony (3H)-1 on the CCOSS study including Pepco's allocation of costs for Primary Distribution Underground Conduit to support its 27% reallocation.⁹⁶ AOBA reiterates that the "use of total distribution revenue" still does not conform to the requirement of the Act and the use of total distribution revenue would still depart substantially from the allocations in *Formal Case No. 1103*.⁹⁷

2. *Pepco Failed to Create a Separate DDOT Improvement Charge for MMA Customers*

44. AOBA's contentions regarding Pepco's failure to create a separate MMA class revenue requirement are substantially the same arguments submitted in *Formal Case No. 1116* and discussed in Order No. 17697 ¶ 53. Generally, AOBA asserts that Pepco erroneously failed to develop the proposed DDOT Improvement Charges for each rate class for which cost allocations were made by Pepco in *Formal Case No. 1103*, and in particular the Company did not develop a separate DDOT Improvement Charge for MMA Customers, which AOBA submits would be relatively easy to do considering that the data required to "calculate a separate DDOT Improvement Charge for MMA customers are readily available."⁹⁸ AOBA argues that the "Commission should require Pepco to establish a DDOT Improvement Charge for [MMA] customers based on allocations of DDOT Improvement Charge costs for that class that are consistent with, and reflective of, the methods used by Pepco to allocate costs to the MMA class in *Formal Case No. 1103*."⁹⁹

3. *Pepco's Inappropriate use of Forecasted Sales Data and Forecasted kWh Adjusted for Billing Lag to Calculate the DDOT Improvement Charge*

45. In its Protest and Objections, AOBA reiterates arguments submitted in *Formal Case No. 1116* regarding Pepco's use of forecasted sales data by class for each year of the Triennial Plan instead of using actual sales data.¹⁰⁰ AOBA's arguments on this point are discussed in Order No. 17697 ¶ 54. Generally, AOBA also asserts that, in this proceeding, the "Commission should direct the Joint Applicants to compute their proposed DDOT Improvement Charges using actual test year sales data by rate class from Pepco's most recent CCOSS" in *Formal Case No. 1103*.¹⁰¹

46. AOBA asserts that the Commission should question the appropriateness of the

⁹⁶ AOBA Protest, Witness Oliver Testimony at 23.

⁹⁷ AOBA Protest, Witness Oliver Testimony at 16-17.

⁹⁸ AOBA Protest, Witness Oliver Testimony at 5, 27.

⁹⁹ AOBA Protest, Witness Oliver Testimony at 9.

¹⁰⁰ AOBA Protest, Witness Oliver Testimony at 37-39.

¹⁰¹ AOBA Protest, Witness Oliver Testimony at 9.

manner in which Pepco determines the kWh for each rate class that are used in the computation of Pepco's proposed dollars per kWh charges, because in analyzing the data submitted by Pepco in an August 25, 2014, errata to Exhibit Pepco (B)-1, AOBA discovered that the kWh by class are not accurately reflected and that, even in the revised version of the exhibit, the kWh shown "are significantly below the Company's forecasted kWh for that period."¹⁰² Further, AOBA witness Oliver testifies that when he compared Pepco's forecasted usage for the twelve months from March 2015 through February 2016, which he derived from information in Pepco's response to AOBA Data Request 1-4 in *Formal Case No. 1116*, to the kWh by class reflected in revised Exhibit Pepco (B)-1, significant differences resulted. Oliver asserts that, "in aggregate the difference is **1,374,029,000 kWh** on an annual basis."¹⁰³ Additionally, AOBA witness Oliver asserts that, in order to compensate for billing lag, Pepco employed a "compression adjustment" to recover its anticipated revenue within a 10 month period instead of over 12 months. AOBA contends that such adjustments are "typically made by adjusting the revenue requirement rather than the assumed billing kWh."¹⁰⁴ However, in response to Staff Data Request 2-2, AOBA asserts that District witness Barnette suggests that "the revenue requirement for the initial 10-month period has been adjusted to account for billing and payment lags," which AOBA contends signifies "that both the kWh and the revenue requirement may have been adjusted to account for the same factors which would clearly be inappropriate."¹⁰⁵

47. AOBA witness Oliver asserts that while Pepco "did adjust forecasted kWh sales downward, effectively increasing the proposed charges in terms of dollars per kWh," he found no "evidence of an adjustment to any portion of the revenue requirement" to reflect billing and payment lags.¹⁰⁶ Furthermore, Oliver argues that the proposed adjustment of forecasted kWh that is incorporated in revised Exhibit Pepco (B)-1 is inconsistent with the manner in which other adjustments will be made through the proposed "true-up" process. AOBA notes that, "[o]nce a set of DDOT Improvement Charges have been in place for more than a few months, the billing/payment lag issue becomes a moot point since any revenue lost . . . should be offset by lagged collection from prior periods."¹⁰⁷ Therefore, AOBA argues, any kWh adjustment considered in this proceeding "would only be appropriate for the initial period."¹⁰⁸

48. For these reasons AOBA asserts that the "Commission should find that the kWh by rate class adjusted for billing lag that Pepco has used to compute the proposed DDOT Improvement Charges are inconsistent with the kWh by class Pepco used to compute its

¹⁰² AOBA Protest, Witness Oliver Testimony at 31 (The period of March-2015 – February-2016).

¹⁰³ AOBA Protest, Witness Oliver Testimony at 31-32.

¹⁰⁴ AOBA Protest, Witness Oliver Testimony at 34.

¹⁰⁵ AOBA Protest, Witness Oliver Testimony at 34.

¹⁰⁶ AOBA Protest, Witness Oliver Testimony at 35.

¹⁰⁷ AOBA Protest, Witness Oliver Testimony at 36-37.

¹⁰⁸ AOBA Protest, Witness Oliver Testimony at 36-37.

distribution service cost allocations in Formal Case No. 1103.”¹⁰⁹

b. The Proposed Surcharges are not truly Non-bypassable

49. AOBA argues that Pepco’s Application fails to ensure that the proposed surcharges are truly non-bypassable, as required by the Act. AOBA witness Oliver asserts the Act does not define the term “non-bypassable” and that Pepco defines “non-bypassable” as “referring to a ‘charge applicable to all distribution service customers (except those served under Rider RAD) regardless of whether they receive energy supply service under SOS or through a Third Party Supplier.’”¹¹⁰ AOBA asserts that the Commission should reject Pepco’s definition of non-bypassable and instead employ AOBA’s definition, which is as follows:

A non-bypassable charge is intended to represent a charge that a customer cannot avoid. In the context of the recovery of costs for securitized bonds, the non-bypassable character of the charge for recovery of costs is a necessary and essential tool for ensuring the issuer’s on-going ability to obtain sufficient revenue to meet its debt service obligations over the full amortization period of the bonds.¹¹¹

AOBA contends that its definition is appropriate because, unlike Pepco’s, it takes into consideration the fact that “there are now an increasing number of customers providing some or all of their own electrical requirements through self-generation” as well as the fact that “[c]ustomers have been encouraged to implement measures that reduce their total annual kWh requirements.”¹¹² AOBA argues that both of these alternatives to using the utility’s distribution system for delivery of all of a customer’s service requirements “have the effect of lowering utility revenue collections under a charge that is billed on the basis of usage (*i.e.*, a volumetric or cents per kWh charge) for an electric utility.”¹¹³

50. AOBA argues that Pepco’s proposed DDOT Improvement Charge is not truly non-bypassable because it will allow, for example, a net metering customer who delivers more kWh to the system than is delivered by Pepco to be billed \$0 for the DDOT Improvement Charge.¹¹⁴ Similarly, “a customer who installs new self-generation capabilities would be billed \$0 for the DDOT Improvement Charge for any month in which the customer meets all of its

¹⁰⁹ AOBA Protest, Witness Oliver Testimony at 9.

¹¹⁰ AOBA Protest, Witness Oliver Testimony at 41 (quoting Pepco’s response to AOBA Data Request 3-1).

¹¹¹ AOBA Protest, Witness Oliver Testimony at 41.

¹¹² AOBA Protest, Witness Oliver Testimony at 41.

¹¹³ AOBA Protest, Witness Oliver Testimony at 41-42.

¹¹⁴ AOBA Protest, Witness Oliver Testimony at 41 (referencing Pepco’s response to AOBA Data Request 3-1, part c).

requirements from its own facilities.”¹¹⁵ AOBA asserts that Pepco’s failure to charge the DDOT Improvement Charge to these individual and large institutional customers (as well as customers who institute conservation measures, close operations, and/or relocate some or all of their operations to another jurisdiction) could result in the District losing “billing revenue on millions of kWh per month.”¹¹⁶

51. AOBA witness Oliver asserts that DDOT’s Improvement Charges could be billed through volumetric charges if “applied to measures of use for a fixed period of time for which a customers’ usage is known and certain” and that the true up mechanism included in the Act can help to ensure that the necessary revenue to fund the projects is collected by DDOT.¹¹⁷ However, Mr. Oliver warns that the relying on the true up mechanism “can be self-defeating if growing losses of sales volumes (*i.e.*, kWh use) lead to a constant upward ratcheting of DDOT Improvement Charges that encourage customers to seek other more economic means of meeting their energy requirements.”¹¹⁸

52. AOBA argues that, for these reasons, the “Commission should conclude that, contrary to the Company’s representations and the requirements of the Act, the proposed DDOT Improvement Charges do NOT constitute non-bypassable charges.”¹¹⁹

c. Pepco’s Proposed Servicing Fee is not Just and Reasonable

53. AOBA asserts that Pepco has not provided sufficient basis for its proposed Servicing Fee. AOBA argues that while Pepco asserts that it reviewed the servicing fees on securitization bonds over the past 2 ½ years and negotiated the proposed Servicing Fee with the District, “there is no indication that either party made any attempt to assess the costs that would need to be incurred to provide the subject services.”¹²⁰ Furthermore, AOBA contends that “neither Pepco nor the District had substantial incentive to limit the Servicing Fee” because the fees will be borne exclusively by Pepco’s distribution service customers in the District.¹²¹ AOBA argues that if the “servicing arrangement [between the District and Pepco] was truly negotiated at arms-length, it should be expected that the District as the purchaser of the services would seek to obtain the required services at the lowest reasonable cost. However, [according to AOBA], the District has offered no explanation for why it was willing to pay a significant

¹¹⁵ AOBA Protest, Witness Oliver Testimony at 41 (referencing Pepco’s response to AOBA Data Request 3-1, part d).

¹¹⁶ AOBA Protest, Witness Oliver Testimony at 42-43.

¹¹⁷ AOBA Protest, Witness Oliver Testimony at 45.

¹¹⁸ AOBA Protest, Witness Oliver Testimony at 45.

¹¹⁹ AOBA Protest, Witness Oliver Testimony at 10.

¹²⁰ AOBA Protest, Witness Oliver Testimony at 48.

¹²¹ AOBA Protest, Witness Oliver Testimony at 47.

premium to Pepco (*i.e.*, a Servicing Fee that is 50% above the servicing fees in the three most recent similar agreements identified).¹²² AOBA also points out that Pepco, “as a provider of a potentially competitive service,” did not offer any consideration of how price adjustments that could occur over the term of the agreement, (*i.e.*, changes in wages, general price inflation, and the pass through of other costs increases that might be beyond Pepco’s control like tax increases) would impact the proposed Servicing Fee.¹²³

54. AOBA also asserts that the Commission should find that any additional compensation for Pepco as the Servicing Agent for the District as part of the bond financing agreement “should only be permitted to the extent Pepco can demonstrate that its servicing costs are incremental to the costs of its utility billing, collection and regulatory activities.¹²⁴ AOBA argues that since “Pepco has made no demonstration of such incremental costs in this proceeding, no servicing compensation can be justified at this time.¹²⁵ Further, AOBA asserts that Pepco’s proposal to include the annual Servicing Fee in distribution service base rate proceedings, “offers no real assurance that any portion of the net margins derived by Pepco through Servicing Fees will [] serve to reduce costs that would otherwise be borne by District ratepayers.”¹²⁶

55. For these reasons, AOBA contends that Pepco’s proposed Servicing Fee is not just and reasonable and the Commission should find that: (1) the magnitude of the Servicing Fee to be paid to Pepco for administering billing and collections for DDOT Improvement Charges is inappropriate and not properly justified;¹²⁷ and (2) the Servicing Fee for Pepco included in DDOT Improvement Charge revenue requirement should be limited to recovery of verifiable incremental costs that Pepco incurs to perform the required services.¹²⁸

d. Pepco’s Proposed Single Issuance of the Bonds is Inappropriate

56. AOBA raises concerns regarding the proposed timing and issuance of the Bonds. AOBA asserts that “[v]ery little is actually known at this point” about the timing, amounts, types and costs of the Bond issuances.¹²⁹ However, AOBA contends that the District has not demonstrated a cost-effective strategy for issuing the Bonds to fund the anticipated DDOT construction activity. Specifically, AOBA asserts, through its witness Oliver, that issuing all of

¹²² AOBA Protest, Witness Oliver Testimony at 50.

¹²³ AOBA Protest, Witness Oliver Testimony at 50.

¹²⁴ AOBA Protest, Witness Oliver Testimony at 50-51.

¹²⁵ AOBA Protest, Witness Oliver Testimony at 51.

¹²⁶ AOBA Protest, Witness Oliver Testimony at 51.

¹²⁷ AOBA Protest, Witness Oliver Testimony at 6.

¹²⁸ AOBA Protest, Witness Oliver Testimony at 10.

¹²⁹ AOBA Protest, Witness Oliver Testimony at 51.

the securitized bonds at one time “could add unnecessarily to the overall costs of financing that ratepayers must bear” because a large portion of the funds raised by the issuance will not be required by DDOT for several years, but ratepayers will be responsible for debt service on the borrowed funds even though the funds are “not actively employed to support current construction activity.”¹³⁰ Instead of using those funds, AOBA argues that the money will “be held in a money market or similar account for many years” and that “the interest earned on funds held in money market accounts is expected to be substantially less than the debt service costs that will be incurred on funds raised through the issuance of securitized bonds.”¹³¹ AOBA asserts that this proposed acquisition of substantial bond funding well in advance of the need for such funds will unnecessarily inflate the proposed DDOT Improvement Charge revenue requirement.¹³²

57. AOBA further contends that the District has not demonstrated that its plan to issue the Bonds in a single issuance will minimize the costs of financing DDOT’s construction activity.¹³³ AOBA asserts that a single, upfront issuance of the entirety of the \$375 million in securitized bonds authorized by the Act is “a risky and speculative strategy” because this approach “accepts significant increases in the effective financing costs during the initial years of the program in an effort to avoid the **potential** for increases in financing costs in later years of the program.”¹³⁴ AOBA argues that not only does DDOT’s funding requirement to support Pepco’s first Triennial Plan require “substantially less than the \$375 million limit for issuances of securitized bonds,” but also “Pepco has already substantially reduced its estimated costs for projects” in the first Triennial Plan.¹³⁵ AOBA argues that if DDOT’s costs also decline, then a single bond issuance “could yield even greater dollar amounts of borrowed funds that are not productively employed for extended periods of time.”¹³⁶

58. For these reasons, AOBA asserts that the Commission has not been presented with adequate evidence of the qualitative or quantitative limitations on the financing costs to be recovered in accordance with Section 301(A)(3) of the Act.¹³⁷ Therefore, AOBA argues that the Commission should reject any financing plan that permits the issuance of securitized bonds that raise funds significantly in excess of the amount of funding required to support DDOT construction activity required as part of an approved Triennial Plan and find that the record in

¹³⁰ AOBA Protest, Witness Oliver Testimony at 52.

¹³¹ AOBA Protest, Witness Oliver Testimony at 52-53.

¹³² AOBA Protest at 4.

¹³³ AOBA Protest, Witness Oliver Testimony at 53.

¹³⁴ AOBA Protest, Witness Oliver Testimony at 53-54 (emphasis in original).

¹³⁵ AOBA Protest, Witness Oliver Testimony at 54 (referencing *Formal Case No. 1116*, Exhibit AOBA (A), filed August 10, 2014 (Direct Testimony of Bruce R. Oliver at pages 48-49)).

¹³⁶ AOBA Protest, Witness Oliver Testimony at 54.

¹³⁷ AOBA Protest, Witness Oliver Testimony at 10 (*See* D.C. Code § 34-1313.01(A)(3)).

this proceeding does not support the reasonableness or appropriateness of a single bond issuance.¹³⁸

D. United States General Services Administration's Protests and Objections

59. GSA's contentions regarding the proposed cost allocations in this proceeding are substantially the same as those submitted in *Formal Case No. 1116* wherein GSA opposed the cost allocation methodology underlying Pepco's proposed UPC. Here, GSA recommends, through its consultant, Dr. Dennis Goins, that the Commission reject the allocation methodology proposed by Pepco to develop the DDOT Improvement Charge and that the Commission instead adopt AOBA's allocation methods as described by AOBA witness Oliver in AOBA's Protest in *Formal Case No. 1116* to: (1) allocate costs associated with the approved undergrounding plan, and (2) develop class-specific underground project charges. GSA concludes by expressing its concern that the "recovery of the bonds under the Act may represent a tax to be collected from customers of Pepco."¹³⁹

E. Verizon's Comments

60. On September 15, 2014, Verizon submitted its Comments on the Joint Application of Pepco and DDOT for Approval of the Triennial Underground Infrastructure Improvement Projects Plan pursuant to the Act and the Application of Pepco for Issuance of a Financing Order under the Act.¹⁴⁰ According to Verizon, if DDOT requires Verizon to relocate any of its existing facilities as a result of the Underground Project, those relocations can take months or years to complete, significantly delaying the Undergrounding Project. Verizon notes that such work could include the relocation of duct banks and manholes, and the placing, splicing, cutting over and testing of new mainline primary and lateral feeder cables.¹⁴¹ In order to avoid disruption in communications services for District residential, business and government customers, Verizon argues that this work would need to be completed before the next steps in the DC Power Line Undergrounding ("DC PLUG") Plan could proceed.¹⁴²

61. Verizon asserts that as part of the Coordination Team process with DDOT, Verizon submitted proposed edits to the Memorandum of Agreement ("MOA") circulated by DDOT and Pepco. Verizon asserts that while DDOT and Pepco argue their intention is not to require any relocation of other utility company facilities through the Undergrounding Project, the possibility remains that they may ultimately require such relocations.¹⁴³ Verizon asserts that

¹³⁸ AOBA Protest, Witness Oliver Testimony at 10.

¹³⁹ GSA Protest at 1-2.

¹⁴⁰ *See generally*, Verizon Comments.

¹⁴¹ Verizon Comments at 4.

¹⁴² Verizon Comments at 4.

¹⁴³ Verizon Comments at 5.

such activity is properly classified as DDOT Underground Electric Company Infrastructure Improvement Activity, which is defined by the Act as “the civil engineering for and the construction and installation of DDOT Underground Electric Company Infrastructure Improvements.”¹⁴⁴ According to Verizon, costs that are incurred by other utilities to relocate facilities at DDOT’s request for this project should be reimbursed by DDOT, and recovered as part of the DDOT Underground Electric Company Infrastructure Improvement Costs. Verizon concludes by requesting that any relocation of utility facilities required by DDOT as part of the undergrounding project be included in the DDOT Underground Electric Company Infrastructure Improvement Activity and the associated costs recovered as part of the DDOT Underground Electric Company Infrastructure Improvement Costs pursuant to the Act.¹⁴⁵

F. Pepco’s Responses to Parties’ Protests and Comments

i. *The Servicing Fee Negotiated Between the District and Pepco is Reasonable*

62. In response to OPC and AOBA’s objection to the Servicing Fee, Pepco asserts that the negotiated Servicing Fee is fixed at a reasonable level for the life of the Bonds and is based on market-comparable data as well as Pepco’s assessment of the work it is obligated to perform as the Servicing Agent. Pepco contends that OPC and AOBA’s recommendation that the Servicing Fee be based on Pepco’s incremental cost, the Company argues that this would be the subject of protracted debate each year and the resolution of such disputes would be inconsistent with the Act’s expedited procedures for reviewing a “true-up request.”¹⁴⁶ Pepco contends that the Servicing Fee was negotiated at an arms’ length and is reasonable. In regards to AOBA witness Oliver’s testimony on this issue, Pepco argues that Mr. Oliver “erroneously claims that the District had no substantial incentive to limit the level of the Servicing Fee negotiated with Pepco, mistakenly asserting that the District will not bear the costs of the Servicing Fee which will be incorporated into the DDOT Improvement Charge.”¹⁴⁷ Further, Pepco argues that AOBA witness Oliver’s argument that the District will not bear the cost of the Servicing Fee is incorrect and should be rejected. Pepco claims that Mr. Oliver’s position ignores the fact that the District government is one of Pepco’s largest distribution service customers, and, therefore, is incented to ensure that the Servicing Fee is as low as reasonably possible since the District will have to pay the DDOT Improvement Charge established by the Commission in this proceeding.¹⁴⁸

¹⁴⁴ Verizon Comments at 5.

¹⁴⁵ Verizon Comments at 6.

¹⁴⁶ *Formal Case No. 1121*, Response of Potomac Electric Power Company to the Protests of the Apartment and Office Building Association of Metropolitan Washington, the United States General Services Administration, and the Office of the People’s Counsel at 3, filed October 20, 2014 (“Pepco Response”).

¹⁴⁷ Pepco Response at 4.

¹⁴⁸ Pepco Response at 4.

63. In response to OPC and AOBA's arguments that the Servicing Fee must be based upon Pepco's incremental costs and include a mechanism for returning to customers any amounts above the Company's actual incremental costs, Pepco asserts that the Act does "not require that the Servicing Fee be structured as OPC and AOBA propose, and that their approach is antithetical to the abbreviated process contemplated by the Act which prescribes that the Commission's review of a true-up request is "limited to a determination of whether there is any mathematical error."¹⁴⁹ Additionally, Pepco contends that AOBA and OPC's approach is contrary to the language of Section 301(a)(9) of the Act which states that a "financing order issued by the Commission is to authorize the execution and delivery of a servicing agreement that includes "provisions for fixing the servicing fee"¹⁵⁰ Based on this language, Pepco argues that the Act does not contemplate an investigation into any disputes regarding Pepco's incremental cost of performing as the Servicing Agent under the Servicing Agreement.¹⁵¹

64. Moreover, despite OPC and AOBA's claims, Pepco contends that basing servicing fees on incremental costs is "clearly not the manner in which a significant majority of other public service commissions have approved servicing fees in recent securitization transactions."¹⁵² Pepco asserts that in nine of the ten transactions identified in its exhibits, the applicable commission approved a servicing fee based on either a percentage of the principal amount of the bonds issued or a specific dollar amount with the servicing fees approved ranging from a high of approximately 12 basis points to a low of 3 basis points.¹⁵³ This range, Pepco argues, aptly illustrates that the Servicing Fee negotiated between the District and Pepco "is reasonable and falls squarely within the range of servicing fees other commissions have found to be appropriate."¹⁵⁴

65. Pepco asserts, given the Company's clear and unambiguous commitment to include the Servicing Fee revenue and associated costs in any future distribution service base rate proceedings, any net margin that Pepco may realize from its activities as Servicing Agent will be credited against the revenue requirement to benefit District customers.¹⁵⁵ Thus, Pepco requests that the arguments advanced by AOBA and OPC in their Protests regarding the Servicing Fee be rejected.¹⁵⁶

¹⁴⁹ Pepco Response at 5.

¹⁵⁰ Pepco Response at 5 (*See* D.C. Code § 34-1313.01(a)(9)).

¹⁵¹ Pepco Response at 5.

¹⁵² Pepco Response at 6.

¹⁵³ Pepco Response at 6-7.

¹⁵⁴ Pepco Response at 7.

¹⁵⁵ Pepco Response at 8-9.

¹⁵⁶ Pepco Response at 9.

ii. *The District intends to Issue the Bonds in a Manner that Achieves the Best Result for District of Columbia Customers*

66. Pepco asserts that the District's intent to have a single bond issuance achieves the best result for District customers. Pepco submits an analysis prepared by the District and described in Jeffrey Barnette's Affidavit ("Barnette") as Attachment A, in response to AOBA and OPC's suggestion that two issuances might save ratepayers' money.¹⁵⁷ Pepco argues that the District's analysis shows that when transaction costs and the risk of higher interest rates are taken into account, a second issuance could result in ratepayers paying more.¹⁵⁸ Pepco identifies the proportion of tax-exempt bonds the District can issue as another factor affecting the cost of issuance.¹⁵⁹ Pepco cites Barnette's testimony which alleges that the proportion used in the original Application was conservative and it may be possible to substantially increase the tax-exempt portion while staying within IRS requirements.¹⁶⁰ Barnette estimates the maximum tax-exempt issuance to be \$345 million.¹⁶¹ Pepco states that the District and its financial advisors and underwriters will continue to monitor the markets to determine the best approach to issuance of the Bonds. Pepco asserts that at all times, the basis of the analysis and the final decision will be to issue the Bonds with a structure that results in the best result for District customers.¹⁶² Pepco concludes that OPC and AOBA have raised no issue of material fact to support the substitution of their market-timing preferences for the reasoned judgment of the District.¹⁶³

iii. *Pepco's Calculation of the DDOT Improvement Charge is in Compliance with the Act*

67. According to Pepco, the issues regarding allocation of cost to customers have been fully litigated in *Formal Case No. 1116*, and Pepco requests that the Commission take administrative notice of the record in that proceeding. Pepco concludes that the arguments in the AOBA and GSA's Protest are meritless and should be rejected.¹⁶⁴

¹⁵⁷ Pepco Response at 11.

¹⁵⁸ Pepco Response at 11-12.

¹⁵⁹ Pepco Response at 12.

¹⁶⁰ Pepco Response at 12.

¹⁶¹ Pepco Response at 12.

¹⁶² Pepco Response at 14-15.

¹⁶³ Pepco Response at 15.

¹⁶⁴ Pepco Response at 15.

- a. The Cost Allocation Methodology Filed with the Financing Order Application Complies with the Act and the Rulings in Formal Case No. 1103 and is Consistent with the Model Used by the Mayor's Task Force that Formed the Basis for the Act

68. Pepco contends that it has proposed an appropriate DDOT Improvement Charge for recovery of District's cost incurred in issuing bonds in connection with the DC PLUG Initiative, as further described in the Financing Order Application.¹⁶⁵ Company witness Joseph Janocha explains that the cost allocation reflected in the DDOT Improvement Charge complies with the method of cost allocation set forth in the Act and reflects the manner of cost allocation approved by the Commission in *Formal Case No. 1103*, Pepco's most recent distribution service base rate case.¹⁶⁶ Pepco claims that its methodology is the same as the allocation approach employed by the Mayor's Task Force and described in the Mayor's Task Force Report, which formed the basis for the Act.¹⁶⁷

69. First, Pepco argues that the cost allocation model filed with the Financing Order Application complies with Section 301(a)(4) of the Act, and should be approved.¹⁶⁸ Pepco argues that in order to allocate the cost to the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement in accordance with the Commission's decision *Formal Case No. 1103*, Pepco must first determine the cost of the initiative and then allocate that cost to customers in the same manner as the Company's costs for electric distribution service are currently allocated to customers, which Pepco asserts it has precisely done.¹⁶⁹ Second, Pepco argues that the canons of statutory interpretation validate the proposed DDOT Improvement Charge referencing a D.C. Court of Appeals decision enunciating the statutory interpretation principles which recognized that in interpreting a statute one "must give effect to all of the provisions of the [act under review], so that no part of it will be either redundant or superfluous."¹⁷⁰ Further, Pepco asserts that Section 301(a)(4) of the Act must also be read in harmony with Section 303(c), which requires that the Commission, in order to approve the DDOT Improvement Charge, find that the DDOT Improvement Charge is "just and reasonable."¹⁷¹

70. Third, Pepco asserts that the DDOT Improvement Charge as proposed is consistent with the Mayor's Task Force recommendation. According to Pepco, "in Pepco

¹⁶⁵ Pepco Response at 16.

¹⁶⁶ Pepco Response at 16.

¹⁶⁷ Pepco Response at 16.

¹⁶⁸ Pepco Response at 17 (*See* D.C. Code §§ 34-1313.01(a)(4) and 1313.03(c)).

¹⁶⁹ Pepco Response at 16-19.

¹⁷⁰ Pepco Response at 19.

¹⁷¹ Pepco Response at 22 (*See* D.C. Code § 34-1313.01(a)(4)).

Exhibit 3 in *Formal Case No. 1116*, the Mayor’s Task Force Finance Committee concluded that ‘[r]atepayer 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.’¹⁷² Fourth, Pepco argues that AOBA’s and GSA’s position is contrary to the Act and the Mayor’s Task Force Report. AOBA witness Oliver and GSA witness Goins disagree with Pepco’s approach to cost allocation and propose to allocate costs to customer classes based on allocation factors found in the CCOSS filed by Pepco in *Formal Case No. 1103*.¹⁷³ Pepco argues that AOBA’s cost allocation methodology neither adheres to the plain language or the plain meaning of the Act. Further, Pepco argues that the Commission does not set rates in blind application of the CCOSS, a key fact that Pepco asserts is ignored by AOBA and GSA.¹⁷⁴

71. Additionally, Pepco argues that AOBA’s D.C. Council Testimony in *Formal Case No. 1116*, submitted here as Commission Exhibit No. 16, contradicts AOBA’s position on this issue.¹⁷⁵ Pepco concludes that AOBA was fully aware of the operative language of the Act, and that AOBA testified in opposition to the Act on that basis.¹⁷⁶ Thus, Pepco argues that AOBA’s “late found belief that ‘distribution service customer class cost allocations’ as used in the Act means allocation factors used in Pepco’s CCOSS” should be rejected.¹⁷⁷

b. The Use of Forecasted kWh is Reasonable

72. Pepco challenges, as “misplaced,” AOBA witness Oliver’s argument that the Commission should require Pepco to use actual 2012 test-year sales data instead of forecasted sales data. Pepco argues that, contrary to AOBA’s contention that forecasted sales data is “speculative” and not required by law, the use of forecasted sales data more closely resembles the time period for which customers will be assessed the DDOT Improvement Charge in comparison to AOBA’s proposed use of 2012 test-year data, which is “stale” and “does not as closely align with the sales data for the years in which customers will be charged for the DDOT Improvement Charge.”¹⁷⁸ Pepco concludes that the Commission should approve its approach and reject AOBA’s.¹⁷⁹

73. Furthermore, Pepco rejects AOBA’s arguments about the adjustments Pepco

¹⁷² Pepco Response at 24.

¹⁷³ Pepco Response at 26.

¹⁷⁴ Pepco Response at 27.

¹⁷⁵ Pepco Response at 30.

¹⁷⁶ Pepco Response at 31.

¹⁷⁷ Pepco Response at 26-31.

¹⁷⁸ Pepco Response at 32.

¹⁷⁹ Pepco Response at 32.

made to forecasted sales in determining the DDOT Improvement Charge for several reasons. First, Pepco asserts that AOBA's argument that the Company did not explain the difference in sales for the Residential AE class between the initial and corrected versions of Exhibit PEPCO (B)-1 is not accurate citing the cover letter to Pepco's August 25, 2014, errata which clearly states: "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)-1 and for the six months ending August 2016 in Exhibit PEPCO (B)-4."¹⁸⁰ Pepco also counters AOBA's argument that the approach of using forecasted kWh is not consistent with the true-up process, by asserting that in either direction, under collection of the DDOT Improvement Charge by Pepco or over-collection, the true-up process would address the difference in collections resulting from the difference between actual and forecasted sales.¹⁸¹ Pepco concludes 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.¹⁸²

c. The DDOT Improvement Charge is Non-bypassable

74. Pepco argues that AOBA's Protest challenge to the non-bypassable nature of the DDOT Improvement Charge is meritless. Pepco contends that the term "non-bypassable" in the context of U.S. utility tariff bonds has a very specific meaning and that non-bypassability "focuses specifically on the assessment of the charge based on delivery service over the utility's wires, regardless of which electricity provider supplies the energy to the customer."¹⁸³ According to Pepco, if the customer receives delivery service, then the customer will be assessed the charge based on actual kWh delivery service; the charge is non-bypassable because the customer does not have the option of determining whether they pay that particular line item on their bill.¹⁸⁴ Further, Pepco asserts, the level of the kWh delivery service received by a customer does not determine whether the charge is bypassable or non-bypassable. Rather, the charge is non-bypassable because the customer is assessed the charge based on actual kWh usage and must pay the amount assessed based on actual kWh delivery service.¹⁸⁵ Pepco further contends that when the Act uses the term "non-bypassable," it is using that term in the same manner as a credit agency because the reason for making it non-bypassable is to meet the credit rating agency requirements and achieve the desired credit rating.¹⁸⁶ The Act provides that the DDOT Improvement Charge must be non-bypassable, meaning that Pepco can collect these charges from all existing retail electric customers and all future retail electric customers within the

¹⁸⁰ Pepco Response at 32.

¹⁸¹ Pepco Response at 33.

¹⁸² Pepco Response at 32-33.

¹⁸³ Pepco Response at 33.

¹⁸⁴ Pepco Response at 34.

¹⁸⁵ Pepco Response at 34.

¹⁸⁶ Pepco Response at 34.

service territory, without any (or with a few) exceptions, based on the distribution service provided by Pepco.”¹⁸⁷ Pepco concludes, therefore, that AOBA’s argument should be rejected and the proposed DDOT Improvement Charge should be approved.¹⁸⁸

d. Verizon Should Bear the Cost of Relocating its Facilities

75. Pepco provided its response to Verizon’s comments in *Formal Case No. 1116*¹⁸⁹ arguing that “Verizon’s principal argument, namely that DDOT should pay for any relocation costs Verizon might incur, is contrary to the Act and should be rejected,” because “costs resulting from Verizon’s relocation of its [] equipment and facilities, if necessary, cannot qualify as DDOT Underground Electric Company Infrastructure Improvement Activity” under the Act.¹⁹⁰ Verizon claims that the costs it would incur should it have to relocate its infrastructure in order to make room for DC PLUG civil infrastructure should be the responsibility of DDOT, not Verizon, and charged to the ratepayers through the DDOT surcharge.¹⁹¹ Pepco argues that this position is contrary to the plain meaning of the Act, which defines “DDOT Underground Electric Company Infrastructure Improvements” as facilities “designed by the electric company, constructed or to be constructed by DDOT, and transferred to, owned, and maintained by the electric company after certain inspections and approvals . . . for exclusive use of the electric company in the distribution of electricity within the District.”¹⁹² Furthermore, Pepco contends that the Act makes it clear that DDOT Underground Electric Company Infrastructure Improvement Costs are those “incurred by DDOT;” therefore, Verizon could not recover costs under that provision of the Act either.¹⁹³ Pepco asserts that “it is not uncommon for utilities such as Verizon to be required to relocate their facilities at the direction of DDOT,” and requests that “the Commission express to Verizon its expectation that utilities will act with expedition to comply with the obligation to relocate facilities and that no party will unduly delay the work

¹⁸⁷ Pepco Response at 33-35.

¹⁸⁸ Pepco Response at 33-35.

¹⁸⁹ *Formal Case No. 1116*, Joint Response of Potomac Electric Power Company and the District Department of Transportation to the Late-filed Comments of Verizon Washington, D.C. Inc. and D.C. Climate Action (“Joint Applicants’ Response to Verizon and DCCA Comments”), filed September 29, 2014. The Commission notes that while Verizon filed its Comments in both *Formal Case Nos. 1116* and *1121*, Pepco only filed its Response to Verizon’s Comments in the *Formal Case No. 1116* docket. As the arguments provided by Pepco in the Joint Applicants’ Response to Verizon and DCCA Comments are equally responsive to Verizon’s Comments in this proceeding, we assume that Pepco’s failure to file the Response in both cases was in error and apply Pepco’s arguments to Verizon’s Comments in this proceeding as well.

¹⁹⁰ Joint Applicants’ Response to Verizon and DCCA Comments at 3-4.

¹⁹¹ Joint Applicants’ Response to Verizon and DCCA Comments at 3-4.

¹⁹² Joint Applicants’ Response to Verizon and DCCA Comments at 4 (citing definitions found at Section 101(11) and 101(14) of the Act).

¹⁹³ Joint Applicants’ Response to Verizon and DCCA Comments at 5 (citing the Act, Section 101(14)).

required by the Act.”¹⁹⁴

V. DECISION

A. Decision on Contested Issues

i. *The Revenue Requirement (Cost) Allocation*

76. AOBA and GSA contend: (1) the cost allocation conducted by Pepco was inappropriate as it excluded customer charge revenue; (2) 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; and (3) Pepco inappropriately sets the DDOT Improvement Charge based on forecasted sales data and forecasted kWh usage adjusted for billing lag. Pepco and OPC, in opposition, assert that Pepco’s cost allocation methodology complies with the requirements of the Act, was properly conducted, and the proposed DDOT Improvement Charge is just and reasonable. Pepco further argues that Pepco appropriately included the MMA class in the residential rate class revenue requirement because the Commission never approved the separate MMA class rate design proposal in *Formal Case No. 1103*, and that Pepco appropriately used forecasted sales data because forecasted sales data more closely resembles the time period for which customers will be assessed the DDOT Improvement Charge.

a. Appropriate Cost Allocation for the DDOT Improvement Charge

77. As noted by Pepco, OPC, AOBA, and GSA, the cost allocation methodology used in this proceeding to determine the DDOT Improvement Charge is the same as the cost allocation issue in *Formal Case No 1116* that was used to determine the Underground Project Charge. In Order No. 17697, the Commission determined that Pepco’s cost allocation 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*. 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. The year one bill impact of the Joint Applicant’s approach results in a \$1.12 monthly charge for the DDOT Improvement Charge (\$0.00149/kWh),¹⁹⁵ while the Year 1 bill impact for AOBA’s proposed DDOT Improvement Charge is \$2.90 (\$0.00386/kWh).¹⁹⁶ When the UPC established in *Formal Case No. 1116* is combine with the DDOT Improvement Charge, Pepco’s Year 1 impact is \$1.29 and AOBA’s Year 1 impact equals \$3.79 (\$0.89 (UPC) + \$2.90 (DDOT Charge) = \$3.79). This figure is roughly 3 times the monthly rate impact for residential R class proposed by Pepco and discussed prior to the enactment of the ECIIFA. Furthermore, this \$3.79 Year 1 impact greatly exceeds the Task Force Report projected cost of \$1.50 for Year 1 and also exceeds the Task Force estimated \$3.25 peak impact in Year 7. Therefore, we once again reject AOBA’s proposal.

¹⁹⁴ Joint Applicants’ Response to Verizon and DCCA Comments at 6.

¹⁹⁵ See Pepco’s Errata filed on August 25, 2014.

¹⁹⁶ See AOBA (A)-2.

78. In Order No. 17697, the Commission determined that Pepco's cost allocation complies with the requirements of the Act. Specifically, in response to the appropriateness of Pepco's cost allocation methodology, we stated:

the Commission finds that Pepco's 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* and is consistent with the legislative intent discussed in the Committee Report.¹⁹⁷

No party has provided us with a reason to deviate from that finding in this proceeding where the facts and circumstances are the same with respect to calculating the DDOT Improvement Charge.

b. Inclusion of the MMA Class in the Residential Rate Class Revenue Requirement

79. In *Formal Case No. 1116*, we addressed whether Pepco's inclusion of the MMA class in the residential rate class revenue requirement allocation was appropriate and concluded that it was because:

[a]lthough the Commission has recognized that there is merit in the argument for a separate MMA class, and, in fact looked at that issue in the most recent Pepco base rate case, it did not approve the separate MMA rate design proposal that was submitted in that case. Instead, it directed the Company to submit an improved MMA rate design in its next rate case. Consequently, in this proceeding, where the Commission is required to use the most recent base rate case findings as a touchstone, there is no basis for the Commission to approve a separate UPC for MMA customers. Therefore, we approve Pepco's inclusion of MMA customers in the residential rate class for purposes of computing the proposed UPC.¹⁹⁸

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

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

80. As in *Formal Case No. 1116*, AOBA challenges Pepco's proposal to use

¹⁹⁸ Order No. 17697 at ¶ 190 (citing *Formal Case No. 1103*, Order No. 17424, ¶ 484).

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. AOBA also contends that Pepco failed to provide an adequate explanation of its billing lag adjustment methodology. Pepco argues that this adjustment is necessitated by Section 303 (e) of the Act which precludes the DDOT Improvement Charges from being billed to customers until after the issuance of Bonds.¹⁹⁹ The Company explained that delays in billing and collection mean that the Company will not collect the surcharge for approximately one and a half months of the first twelve-month period for which the surcharge is calculated. Therefore, the Company adjusted the forecasted sales downward (a compression adjustment) to account for this lag.²⁰⁰ We find that the use of forecasted kWh sales adjusted for billing lag as proposed by Pepco is reasonable and consistent with the Act.

81. Further, we find 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. In *Formal Case No. 1116*, in deciding this issue in the context of the Pepco's UPC, 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.²⁰¹ 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.²⁰²

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

¹⁹⁹ See D.C. Code § 34-1313.03(e).

²⁰⁰ See Pepco's Response to PSC Data Request No. 3, Question 1 (August 22, 2014). An adjustment for billing lag has been approved in other utility securitization cases. See Public Utility Commission of Ohio; Issuance Advice Letter for Phase-In-Recovery Bonds and Certificates of Ohio Edison Company, the Cleveland Electric Illuminating Company, and the Toledo Edison Company, page 5 of 25 (June 13, 2013).

²⁰¹ 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.

²⁰² Order No. 17697 at ¶ 191.

82. Based on the discussion above, we also conclude that the DDOT Improvement Charge in this proceeding has been correctly calculated and is just and reasonable. Accordingly, we authorize Pepco to impose and collect the DDOT Improvement Charge on all non-RAD customers as a non-bypassable adjusting volumetric surcharge consistent with the Act.

ii. Verizon Should Bear the Costs of Relocating its Facilities

83. In its Comments, Verizon argues that any costs incurred by Verizon due to having to relocate its facilities in order to accommodate the DC PLUG infrastructure should be included as a cost that is paid by ratepayers through the DDOT Surcharge. Pepco argues, in response, that the Act does not support Verizon's assertions, nor is it uncommon for utilities such as Verizon to bear the cost of relocating their facilities under these circumstances. The Commission addressed Verizon's Comments in Order No. 17697, and decided that:

[g]iven the language of the Act and the general practice used in the District for the relocation of infrastructure by a utility when DDOT is performing work, we think DDOT was correct not to include relocation costs for Verizon in its cost estimates. Furthermore, the Commission will expect Verizon and other utilities to cooperate with DDOT and expeditiously comply with their obligation to relocate facilities so that the work required to implement the Act will not be delayed.²⁰³

Therefore, Verizon shall bear the costs associated with relocating its facilities, if needed, to accommodate the DC PLUG infrastructure.

iii. Appropriateness of the Proposed Servicing Fee

84. Both OPC and AOBA question the reasonableness of the Servicing Fee proposed by Pepco in this proceeding. OPC and AOBA recommend not only that the overall Servicing Fee be reduced to a just and reasonable rate, but also that the fee be based on Pepco's incremental cost and be subject to a true up mechanism in order to return to ratepayers any amounts above the Company's actual incremental costs of providing service. Pepco, on the other hand, argues that: (1) its proposed Servicing Fee of 0.075% (*i.e.*, 7.5 basis points) falls within the range of fees approved by other commissions in recent securitization transactions; (2) structuring the Servicing Fee in the manner proposed by OPC and AOBA "is antithetical to the abbreviated process contemplated by the Act;" (3) basing the Servicing Fee on incremental costs is not in accordance with the way a significant majority of commissions have approved servicing fees in recent securitization transactions; (4) the District, as a major Pepco customer, will be required to pay this fee and therefore was motivated to make certain that the fee was reasonable; and (5) the net margin from the Servicing Fee revenue and associated costs will be credited against the revenue requirement to the benefit of District customers in the next base rate case proceeding. Therefore, Pepco asserts, the Commission should approve its proposed Servicing Fee.

²⁰³ Order No. 17697 at ¶ 214.

85. The Commission agrees with OPC and AOBA that Pepco has not provided sufficient rationale to justify its proposed Servicing Fee of 0.075%. Pepco asserts that the proposed Servicing Fee negotiated between the District and Pepco “is reasonable and falls squarely within the range of servicing fees other commissions have found to be appropriate,” ranging from a high of approximately 12 basis points to a low of 3 basis points. The Commission does not agree that the proposed fee is reasonable simply because it falls within the range of other approved servicing fees. If the fee is tested against additional criteria such as the size of the current bond transaction in relation to other bond transactions and the overall trend in the amount of the servicing fees approved by other commissions, it becomes apparent that the proposed Servicing Fee is too high.

86. In conducting our own review and analysis of the Historical RRB Issuance with Servicing Fee from 1997-Present chart,²⁰⁴ submitted by Pepco as Exhibit A to District witness Barnette’s testimony, the Commission notes that the last three securitization transactions, which have bond issuances comparable in size to the one we are authorizing in this proceeding, had an approved servicing fee of 0.05%.²⁰⁵ Further, five out of seven of the most recent transactions, and nineteen out of the last thirty-two securitization transactions utilized a servicing fee of 0.05%, with two others at 0.03%. In other words, since 2005, 65% of the securitization transactions, a clear majority, have had a servicing fee of 0.05% or less.

87. Therefore, based on this review and analysis, the Commission finds that the proposed Servicing Fee, although negotiated and agreed to by the District and Pepco, is unreasonable. The Commission finds that, given the overall trends since 2005 and approved servicing fees from recent bond transactions of a similar size to the one being authorized in this proceeding, the Servicing Fee in this transaction should be reduced from 0.075% (7.5 basis points) to 0.05% (5 basis points). This reduction in the Servicing Fee results in a 33% reduction in fees, equal to \$178,665 per year, saving ratepayers approximately \$1.6 million over the life of the Bonds.

88. Consequently, the Commission also finds that the Successor Servicing Agent Fees, which are tied to the initial Servicing Fees, should be reduced. The Commission understands that the credit rating agencies require assurance that the Commission has authorized sufficient funds to pay a Successor Servicing Agent under the Servicing Agreement, including one unaffiliated with Pepco.²⁰⁶ In undertaking a similar review of the recent successor servicing fees approved by other commissions as we conducted for initial servicing fees, we found that no commission-approved successor servicing fee has been less than 0.60%, even when the initial Servicing Fee was approved at 0.05%. Additionally, in 14 out of the last 21 securitization

²⁰⁴ Pepco cites the sources underlying the data presented in this chart as: “Bloomberg, Company Filings, Press Releases and Other Publicly Available Information.”

²⁰⁵ See Historical RRB Issuance with Servicing Fee chart. Michigan (July 2014), New York (December 2013), and West Virginia (November 2013).

²⁰⁶ *Formal Case No. 1121*, Pepco Updated Response to Staff Data Request No. 1, Question 2, filed September 24, 2014.

transactions, or 67%, a clear majority, of the securitization transactions since 2008 have set successor servicing fees at 0.60%. Therefore, the Commission finds it reasonable and sufficient in this instance to set a similar successor servicing fee and reduces the maximum Successor Servicing Fee from 0.75% (75 basis points) to 0.60% (60 basis points), unless a higher fee is approved by the Commission.

89. Regarding OPC and AOBA's assertion that the Servicing Fee should be based on Pepco's incremental cost, and OPC's request that any fees in excess of Pepco's incremental costs be refunded to ratepayers through a true up mechanism, the Commission finds persuasive Pepco's responses that the method for calculating the Servicing Fee is not stated in the Act; that OPC and AOBA's proposed structuring is in conflict with the expedited nature of the Act; and the method proposed by OPC and AOBA is contrary to the manner in which most commission-approved securitization transactions have been structured.²⁰⁷ Furthermore, we find that Pepco's proposal to credit back any excess revenue received in its next base rate case, instead of incrementally, is a reasonable method of handling any excess fees received by the Company and is hereby adopted by the Commission.

iv. Timing of the Release of the Bonds

90. AOBA opposes the District's proposal to have a single issuance of the Bonds and OPC opposes a single issuance without further explanation of the reasons for a single issuance as opposed to multiple issuances by Pepco. Collectively, OPC and AOBA argue that: (1) DDOT is inflating the DDOT Improvement Charge revenue by pre-funding the Bonds in advance of construction at a negative impact to ratepayers of \$31 million over seven (7) years; (2) a single issuance may cause the District to use less tax-exempt financing than otherwise allowed by federal tax law; and (3) a multiple issuance could result in significant ratepayer benefits, including cost savings. Pepco responds that DDOT's proposal to have a single issuance of the Bonds is appropriate because: (1) a single issuance achieves the best results for District ratepayers; (2) the District's analysis shows that when transaction costs and the risk of higher interest rates are taken into account, a second issuance could result in ratepayers paying more; and (3) the District was conservative in its estimation of the amount of tax-exempt bonds it can issue and might be able to substantially increase the tax-exempt portion while staying within IRS requirements – estimating the maximum tax-exempt issuance to be \$345 million.

91. While AOBA and OPC have raised valid concerns regarding a single issuance due to the timing of the construction schedule, we believe the potential for higher interest rates and the additional transaction costs likely outweigh any potential benefits of a second issuance. Interest rates are generally at, or near, all-time lows. The current bond market conditions are very favorable for issuance of securities at this time. The Federal Reserve has already commenced plans to tighten monetary policy, and it announced the end of its bond buying

²⁰⁷ The overarching tenor of the ECIIFA requires expedited action by Pepco, DDOT, interested parties, and the Commission. For example, *see* ECIIFA § 303(f) - Commission shall expedite its consideration of any applications for financing order; *see also*, "Subtitle C. Expedition; Reconsideration; Judicial review; Review and Analysis," which prescribe expedited timelines for the Commission and the Court of Appeals in its consideration of applications emanating from the ECIIFA.

program in October which could lead to higher interest rates.²⁰⁸ Increasing interest rates will have a direct impact on the interest rates that would be achieved on the Securitization Bonds, and, therefore, increase the costs that ratepayers will incur over the term of the bonds.

92. Additionally, we believe OPC's estimate of the potential for approximately \$31 million in increased costs associated with a single issuance due to the construction schedule is overstated. Even if there are two bond issuances, there will still be a timing difference between each issuance and the use of the proceeds due to the construction schedule. This must be taken into account for a fair comparison of the potential costs associated with a single issuance versus two or more issuances. Also, the additional upfront transaction costs associated with a second bond issuance must be included in the analysis. The District estimated the net present value cost associated with a single issuance to be \$23 million which could be offset by a 147 point increase in interest rates between the first and second issuance.²⁰⁹ Also, while the Commission generally agrees with OPC that multiple issuances would likely maximize the amount of tax-exempt bonds that could be issued by the District, we accept Pepco's representation that it now believes that the amount of the estimated tax-exempt debt can be increased without the need for a second issuance which would offset much of the benefits of a second issuance related to tax-exempt debt.

93. A second bond issuance would also expose ratepayers to the potential costs associated with rising interest rates. There is a considerable risk that interest rates will rise over the next several years, if not sooner. A one percent (1%) increase in interest rates would result in approximately \$1.8 million more per year in ratepayer costs or more than \$32 million in nominal terms over the estimated life of the Bonds.²¹⁰ Multiple issuances would also reduce the size of each transaction resulting in relatively small issuances for securitizations which could limit investor interest in the Bonds and result in somewhat higher interest rates than could be achieved with a single issuance. Therefore, in order to lock in the historically low interest rates on the Bonds for the benefit of ratepayers, the Commission directs the District to issue the Bonds in a single issuance as soon as reasonably practicable, unless there is a material change in market conditions. We are directing that the decision for a single issuance be subject to ongoing analysis by the District and the Commission's financial advisor and subject to change based on market conditions including rating agency considerations.

v. *Non-bypassability of the DDOT Improvement Charge*

94. 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.²¹¹ While it may be

²⁰⁸ See Lorenzetti, Laura, "End of an era as the Fed Ends its huge bond-buying program," *Fortune*. Web. October 29, 2014.

²⁰⁹ Pepco Response, Affidavit of Barnett at ¶ 11.

²¹⁰ See *Formal Case No. 1121*, Pepco Response to Staff Data Request 1, Question 8, filed September 11, 2014.

²¹¹ See AOBA Protest, Witness Oliver Testimony at 42-43.

true that some distribution customers may reduce their DDOT Improvement Charge through the implementation of net metering or self-generation, this reduction is no different than any other Pepco customer that reduces their consumption by conserving or using less energy. The DDOT Improvement Charge as proposed by Pepco in the Financing Order would establish an irrevocable, non-bypassable, volumetric surcharge applicable to all of Pepco's distribution service customers within the District of Columbia, other than members of the RAD customer class or any succeeding discount customer class. As Pepco indicates, if a customer receives delivery service, then the customer will be assessed the charge based on the actual kWh delivered. The charge is non-bypassable because the customer does not have the option of determining whether they pay that particular line item on their bill. Accordingly, we are not persuaded by AOBA that because some net metering or self-generation customers can substantially reduce their surcharge costs, Pepco's proposed surcharge is not non-bypassable. Since Pepco will collect these charges from all existing retail electric customers and all future retail electric customers within the service territory, based on the distribution service provided by Pepco, we find that the proposed DDOT Improvement Charge is a non-bypassable charge on all non-RAD customers within the meaning of the Act.

B. Decision on Financing Application

i. Approved Securitization Transaction Structure

95. The proposed terms of the Bonds and the security structure for the Securitization provided in the record and accepted by this Financing Order are summarized below.

a. Terms of the Bonds

96. The District proposes to issue up to \$375 million in par amount of Bonds under the Act and Section 490 of the Home Rule Act.

97. While the District anticipates that the issuance of tax-exempt Bonds would be advantageous and result in a lower cost of indebtedness, the District may issue a portion of the Bonds as taxable bonds due to limitations of the Internal Revenue Code and regulations thereunder governing the issuance of tax-exempt bonds.

98. The District plans to structure the Bonds to reduce all-in borrowing costs and benefit Customers by securing the highest reasonably attainable credit rating for the Bonds, which is currently targeted to be an "AAA" rating.

99. The District anticipates that all of the Bonds will be issued as fixed rate bonds in the first half of calendar year 2015. No Bonds will be issued on a date more than ten years following the effective date of the Act, *i.e.*, May 3, 2024. Due to favorable market conditions that currently exist, the District is directed to issue the Bonds as soon as is reasonably practicable unless there is a material change in market conditions that warrants two issuances.

100. The District anticipates that the Bonds will be amortized over 30 years or less

from their date of issuance with an Expected Maturity Date of approximately 18 years and Legal Final Maturity Date of 20 years.

101. The Bonds will be issued and sold to capital market bond investors in one or more maturities, each having a distinct par amount, amortization schedule, and interest rate. The form, repayment schedule, classes, number of credit ratings, and other characteristics of the Bonds, will be determined by the District with input from the Commission's financial advisor at the time of pricing.

102. The Commission finds in this Financing Order that the Bond terms, as described by the District in the record as modified herein, are consistent with the Act and should be approved.

b. Security for the Bonds

103. The Bonds will be secured by and payable solely from the DDOT Improvement Property created pursuant to this Financing Order. The DDOT Improvement Charges and any proceeds thereof, which are referred to in the Act as DDOT Improvement Revenue, are irrevocably pledged pursuant to Section 203(b) of the Act as security for the repayment of the Bonds and all Financing Costs.²¹²

104. In connection with the issuance of the Bonds, the District intends to enter into a trust indenture (the "Indenture") with a trustee (the "Indenture Trustee"), pursuant to which the Indenture Trustee shall receive, hold and disburse all amounts in the DDOT Improvement Fund upon the terms and conditions set forth in the Indenture.

105. Pursuant to the Act and the Indenture, the District shall establish a segregated trust account (the "Collection Account") in the DDOT Improvement Fund. All DDOT Improvement Revenue will be deposited by the Indenture Trustee into the Collection Account as received from Pepco, as Servicing Agent (defined herein), or any successor servicer.

106. The District will also establish another trust account, the reserve account (the "Reserve Account"), to enhance the security for the Bonds and assist in obtaining the highest reasonably attainable credit rating on the Bonds. The Reserve Account will initially be funded from the proceeds of the Bonds as an Upfront Financing Cost.

107. Moneys in the Reserve Account will be used to pay (i) debt service on the Bonds and (ii) certain priority Ongoing Financing Costs (as described in the Indenture).

108. The District anticipates funding the Reserve Account in an amount equal to 0.5% of the initial par amount of the Bonds, unless rating agency considerations or the market for the Bonds require a greater reserve requirement.

109. The money in the Collection Account, the Reserve Account, and certain other

²¹² See D.C. Code § 34-1312.03(b).

accounts held under the Indenture securing the Bonds, will be invested by the Indenture Trustee in short term, high quality investments which are described in the direct testimony of District witness Barnette.

c. True-Up Mechanism

110. The principal credit enhancement for the Bonds will be the “true-up mechanism” authorized by Sections 301 and 314 of the Act and this Financing Order.²¹³

111. The true-up mechanism is a periodic adjustment to the DDOT Improvement Charge which must occur not less often than annually on or before April 1 of each year or more frequently as necessary to reconcile actual DDOT Improvement Charge collections with forecasted collections and ensure that DDOT Improvement Revenue is sufficient to satisfy the DDOT Improvement Revenue Requirement. In the Financing Order Application, the Applicant has requested that the DDOT Improvement Charge be adjusted no less frequently than semiannually, as further described in this Financing Order.

112. In the direct testimony of Pepco witness Janocha and in the direct testimony of District witness Barnette, Exhibit PEPCO (B)-4, as well as in the proposed form of the DDOT Property Servicing Agreement (the “Servicing Agreement”) and in Tabs 5 and 6 (respectively) to the Financing Order Application, the Applicant sets forth in detail the proposed true-up methodology pursuant to which periodic true-up adjustments (the “True-Up Adjustment”) to the DDOT Improvement Charge are to be calculated and implemented (the “True-Up Mechanism”).

113. The True-Up Mechanism as described in the Servicing Agreement and in Tabs 5 and 6 (respectively) to the Financing Order Application and approved in this Financing Order will help ensure the timely and full payment of the Bonds and other Ongoing Financing Costs, thus enhancing their credit quality and helping to assure that the Bonds obtain the highest reasonably attainable credit ratings. In this Financing Order, we approve the True-Up Mechanism as proposed by the Applicant.

d. Servicing Arrangements

114. Pursuant to Section 301 of the Act, Pepco, as servicing agent (the “Servicing Agent”) or any successor, is required to bill and collect the DDOT Improvement Charge, as agent for the District.²¹⁴

115. In the Financing Order Application, Pepco has requested that Pepco be authorized to execute a Servicing Agreement with the District, substantially in the form attached at Tab 5 to the Financing Order Application, with such changes as may be agreed to by Pepco and the District consistent with this Financing Order and as are required to achieve the highest reasonably attainable credit rating on the Bonds. A brief summary of the provisions of the

²¹³ See D.C. Code §§ 34-1313.01 and 1314.

²¹⁴ See D.C. Code § 34-1313.01.

Servicing Agreement is provided below.

116. Under the Servicing Agreement, Pepco, as Servicing Agent, will be responsible for billing and collecting the DDOT Improvement Charge and promptly remitting the DDOT Improvement Revenue to the Indenture Trustee. In addition, Pepco will be required to file requests for True-Up Adjustments (“True-Up Requests”) consistent with the True-Up Mechanism approved in this Financing Order.

117. Pursuant to the Act and the Servicing Agreement, the District is required to provide to the Servicing Agent, in connection with each True-Up Adjustment, the calculation of the DDOT Improvement Revenue Requirements in order to allow the Servicing Agent to calculate the necessary adjustments to the DDOT Improvement Charge.

118. As consideration for its servicing responsibilities under the Servicing Agreement, Pepco asked to receive an annual fee (the “Servicing Fee”) in an amount equal to 0.075% of the initial aggregate par amount of the Bonds (without giving effect to any subsequent reduction in the outstanding par amount of the Bonds or any premium); however, for reasons set out in this Financing Order, the Commission has concluded that the Servicing Fee should be 0.05%.

119. Article VI of the Servicing Agreement specifies the events in which Pepco would be in default of its obligations as Servicing Agent and could be replaced. In general, these events include: (i) consistent with Section 201(b) of the Act, any failure by Pepco to remit the DDOT Improvement Charge within the agreed-upon time period specified in the Servicing Agreement;²¹⁵ (ii) any failure on the part of Pepco to observe or to perform in any material respect any covenant or agreement set forth in the Servicing Agreement; (iii) any representation or warranty made by Pepco in the Servicing Agreement proves to have been incorrect in a material respect when made; (iv) an Insolvency Event (as defined in the Servicing Agreement) occurs with respect to Pepco; and (v) failure of Pepco to file a True-Up Request. Pepco cannot be removed as Servicing Agent unless a subsequent Servicing Agent has been selected, and the successor Servicing Agent agrees to be bound by the terms and conditions of the Servicing Agreement.

120. Under terms of the Servicing Agreement, Pepco may not voluntarily resign from its duties as Servicing Agent unless it delivers an opinion from Pepco’s counsel that the continued performance by Pepco as Servicing Agent would no longer be permissible under applicable law. In addition, Pepco cannot resign as Servicing Agent unless a successor Servicing Agent has been selected, and the successor Servicing Agent agrees to be bound by the terms and conditions of the Servicing Agreement.

121. In the direct testimony of District witness Barnette, the District has requested that if Pepco or its successor is required to be replaced as Servicing Agent under the Servicing Agreement, then the successor Servicing Agent, if not affiliated with Pepco or its successor, may be paid a servicing fee which will not exceed 0.75% per annum of the original par amount of the Bonds, unless a higher fee is approved by the Commission.

²¹⁵ See D.C. Code § 34-1312.01(b).

122. Despite Pepco's request, for the reasons set out in this Financing Order, the Commission finds that a Successor Servicing Agent, if not affiliated with Pepco or its successor, may be paid a Successor Servicing Fee which will not exceed 0.60% per annum of the original par amount of the Bonds, unless a higher fee is approved by the Commission.

123. In the direct testimony of District witness Barnette, the District has requested that the Financing Order provide that: (i) regardless of who is responsible for billing, the Customers shall continue to be responsible for the DDOT Improvement Charge; (ii) if a third party meters and bills for the DDOT Improvement Charge, the electric company, as Servicing Agent, must have access to information on billing and usage by Customers to provide for proper reporting to the District and to perform its obligations as Servicing Agent; (iii) in the case of a third party default, billing responsibilities must be promptly transferred to another party to minimize potential losses; (iv) the failure of Customers to pay the DDOT Improvement Charge shall allow service termination by Pepco (or its successor), as Servicing Agent, of the Customers failing to pay the DDOT Improvement Charge in accordance with Commission-approved service termination rules and orders and the electric company's customary billing practices and procedures; and (v) the DDOT Improvement Charge will be collected in a manner that will not adversely affect the rating on the Bonds.

e. Upfront and Ongoing Financing Costs

124. The Act permits the recovery of two general categories of financing from the proceeds of the Bonds or the collection of the DDOT Improvement Charge: Upfront Financing Costs and Ongoing Financing Costs. In this Financing Order, the Commission is required to specify any qualitative or quantitative limitations on the recovery of such Financing Costs, provided that any such limitations cannot impair the ability to pay and service the Bonds on a timely basis.

125. Upfront Financing Costs are defined, generally, to mean the expenses associated with the structuring, marketing, and issuance of the Bonds, and are intended to be recovered from the proceeds of the Bonds. The Applicant has requested the right to recover Upfront Financing Costs, including, among other items, the underwriting discount, rating agency fees, accounting fees, printing and marketing expenses, legal fees, financial advisor fees for the District and the Commission, and any Indenture trustee set-up fees and the funding of one or more reserve funds.

126. In the direct testimony of District witness Barnette, the District projected that the estimated Upfront Financing Costs, based upon a single issuance of Bonds, would be approximately \$4.8 million. These Upfront Financing Costs are more particularly described in DC Exhibit (A)-2. The District has further requested that it be given flexibility in determining the final amounts of such Upfront Financing Costs at or about the time of pricing of the Bonds. Although the District does not believe that is appropriate to set parameters on Upfront Financing Costs at the current time given the amount of work yet to be done, the District acknowledges that the actual upfront financing costs are not expected to vary materially from its estimates absent

significant changes in the anticipated structure of the bonds and market conditions.²¹⁶

127. The Commission finds that the estimated Upfront Financing Costs proposed for recovery by the District are reasonable and eligible for recovery under the Act. The Commission further finds that the District should be given flexibility in determining the final Upfront Financing Costs provided that a reasonable cap is imposed to protect ratepayers. Therefore, Upfront Financing Costs, as approved by the District, which do not exceed \$5.5 million unless otherwise approved by the Commission, are authorized and eligible for recovery from the proceeds of the Bonds in accordance with the Act.

128. Ongoing Financing Costs are defined, generally, to mean Financing Costs that are not Upfront Financing Costs and any Upfront Financing Costs not paid from the proceeds of Bonds. Ongoing Financing Costs, which are more specifically described in the direct testimony of District witness Barnette, include debt service on the Bonds; any amount required to fund or replenish a reserve account, any federal, state, or local taxes, payments in lieu of taxes, franchise fees, or license fees imposed on DDOT Improvement Revenue; and any cost related to administering and servicing DDOT Improvement Property and the Bonds, including, without limitation, costs of calculating adjustments of the DDOT Improvement Charge, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees and expenses, administrative fees and expenses, fees and expenses of the District's or the Commission's advisors and outside counsel, if any, rating agency fees, and any other related cost (including Upfront Financing Costs) not paid from the proceeds of the Bonds.

129. In the direct testimony of District witness Barnette, the District has estimated that, based upon market conditions as of July 16, 2014, and upon a single Bond issuance of approximately \$375 million, as well as the interest rate, amortization and other assumptions set forth in his direct testimony, the DDOT Improvement Revenue Requirement will be approximately \$30 million for the first full year following the issuance of the Bonds. This estimated DDOT Improvement Revenue Requirement is more particularly described in DC Exhibit (A)-6.

130. The allocation and calculation of the DDOT Improvement Charge is described in the direct testimony of Pepco witness Janocha.²¹⁷ The estimated DDOT Improvement Charge is designed to collect \$25,845,061 in total revenues during the first 12 months which will be sufficient to pay Debt Service on the Bonds and all other Ongoing Finance Costs for the first 12 months, after the issuance of the Bonds.²¹⁸ Assuming the DDOT Improvement Revenue Requirements set forth in the direct testimony of District witness Barnette, Pepco witness Janocha projects the current residential customer using an average of 750 kWhs per month would

²¹⁶ *Formal Case No. 1121*, Pepco Response to OPC Data Request No. 1, Question 40, filed September 10, 2014.

²¹⁷ PEPCO (B), witness Janocha's Testimony.

²¹⁸ *Formal Case No. 1121*, Errata - to Application for Issuance of a Financing Order, filed August 25, 2014.

see an estimated monthly bill impact in 2015 of \$1.12 or 1.13%.²¹⁹ However, Pepco and the District are directed to include in the Issuance Advice Letter a calculation, including workpapers, of the Year One surcharge based on: (a) the directives of this Financing Order which changes the total cost and revenue requirement; and (b) an updated SL/TS total revenue minus customer charge.²²⁰ The updated surcharge and tariff should be filed with the Issuance Advice Letter.

f. Application of Bond Proceeds

131. The DDOT Improvement Costs that are proposed to be funded with the net proceeds of the Bonds will be the costs of the DDOT Improvement Activity approved by the Commission in the Triennial Plan, as approved pursuant to Order No. 17697, and such additional activities as may be approved by the Commission in subsequent triennial Underground Infrastructure Improvement Projects Plans submitted by Pepco and DDOT, jointly, pursuant to Section 307(a) of the Act.²²¹

132. The specific DDOT Improvement Costs which are to be funded are described in greater detail in the direct testimony of District witness Keith Foxx. In this Financing Order we find such DDOT Improvement Costs to be consistent with the Act and eligible for funding with the proceeds of the Bonds.

g. Public Interest Determination

133. As we stated in Order No. 17697, “[t]he ECIIFA lays the foundation for Pepco to address the concerns that many District residents and Pepco customers have had over the years regarding system reliability and resilience.”²²² The improvements authorized by the ECIIFA will facilitate the undergrounding of certain particularly vulnerable electric power lines and their ancillary facilities. Such undergrounding can be expected to increase the reliability of the electric distribution system in the District of Columbia and reduce the economic, social, and other impacts on the District’s electricity users caused by repeated power outages. The collaborative process between Pepco and DDOT that the ECIIFA authorizes allows the Undergrounding Project to proceed under a financing mechanism that lowers the costs for ratepayers. Based on our review of the Act, Pepco’s Financing Order Application, and the Comments, Protests and Objections to the Financing Order Application, we find the Financing Order Application, and its proposal for one or more tax-exempt or taxable bond issuances up to the maximum par amount of \$375 million, to be fair, reasonable, and beneficial to the District, its residents and the customers of Pepco for the reasons we have stated in this Financing Order. We, therefore, conclude that the approval of the Financing Order Application, as amended

²¹⁹ Errata Janocha p.8.

²²⁰ Based on Commission Exhibit No. 7 in *Formal Case No. 1116*, Pepco’s Data Response to Staff DR No. 3-3, the SL/TS total revenue minus customer charge should be \$637,179 rather than \$575,602 as specified in Pepco’s Errata filed on August 25, PEPCO (B)-1, Authorized Demand/Energy Charge Recovery.

²²¹ See D.C. Code § 34-1313.07(a).

²²² Order No. 17697, ¶ 235.

herein, is in the public interest.

VI. FINDINGS OF FACT

134. Based on the record in this proceeding, the Commission makes the following findings of fact:

A. Approval of Financing Order Application

135. The Commission published the required notice to the public of the Financing Order Application and otherwise complied with the requirements of Section 303(a)(1) of the Act before issuing this Financing Order.²²³

136. The approval of the Financing Order Application as amended herein is consistent with the Act and in the public interest.

B. DDOT Improvement Activities to be Financed

137. The Act authorizes the District to issue Bonds to fund the costs of DDOT Improvement Activity, namely the civil engineering for and the construction and installation of the DDOT Underground Electric Company Infrastructure Improvements (“DDOT Improvements”). DDOT Improvements include underground conduits, manholes, and similar facilities, including facilities ancillary to the foregoing, designed and to be constructed by DDOT, and transferred to and maintained by Pepco in the distribution of electricity within the District of Columbia.

138. The DDOT Improvements and the DDOT Improvement Activity, which will be funded with the proceeds of the Bonds, will be in the public interest as such improvements will facilitate the undergrounding of certain particularly vulnerable electric power lines and their ancillary facilities. Such undergrounding can be expected to increase the reliability of the electric distribution system in the District of Columbia and reduce the economic, social, and other impacts on the District’s electricity users caused by repeated power outages.

139. The DDOT Improvement Costs associated with the DDOT Improvement Activity that are proposed to be funded by the District with the net proceeds of the Bonds will include the DDOT Improvement Costs approved by the Commission in the initial Triennial Plan, and such additional activities as may be approved by the Commission in subsequent triennial Underground Infrastructure Improvement Projects Plans submitted by Pepco and DDOT, jointly, pursuant to Section 307(a) of the Act.²²⁴

140. The DDOT Improvement Activity and DDOT Improvement Costs associated with such activity, that are described in the record and proposed for funding through the issuance of

²²³ See D.C. Code § 34-1313.03(a)(1).

²²⁴ See D.C. Code § 34-1313.07(a).

the Bonds will contribute to the health, welfare, and safety of residents of the District of Columbia, are in the public interest, and are eligible for financing and recovery under the Act consistent with this Financing Order.

C. Financing Order Irrevocability

141. Pursuant to Section 304 of the Act, this Financing Order is irrevocable and the Commission may not reduce, impair, or terminate the DDOT Improvement Property approved in this Financing Order or impair the collection or recovery of the DDOT Improvement Charge or DDOT Improvement Revenue until the Bonds issued pursuant to this Financing Order have been paid in full and all Financing Costs relating to the Bonds have been paid in full.²²⁵

142. In accordance with Section 301(c) of the Act, except to implement any True-Up Adjustment in accordance with this Financing Order, the Commission may not amend, modify, or terminate this Financing Order by any subsequent action or reduce, impair, postpone, terminate, or otherwise adjust the DDOT Improvement Charge approved in this Financing Order.²²⁶

D. Terms of the Bonds

143. The District is authorized under the Act to issue Bonds up to the maximum par amount of \$375 million, consistent with the limitation in Section 202(a) of the Act.²²⁷

144. The District expects to issue and sell fixed rate Bonds in one or more series and tranches.

145. The District anticipates issuing both tax-exempt and taxable Bonds.

146. The use of tax-exempt Bonds is anticipated to lower the cost of borrowing. The District is directed to issue the maximum amount of tax-exempt Bonds reasonably permitted by the Internal Revenue Service and regulations governing the issuance of tax-exempt bonds in order to lower the cost of borrowing to the extent reasonably possible.

147. The District anticipates that the Bonds will be amortized over 30 years or less from their date of issuance with an Expected Maturity Date of approximately 18 years and Legal Final Maturity Date of 20 years with no Bonds issued on a date more than ten years following the effective date of the Act, *i.e.*, May 3, 2024.

148. The District plans to structure the Bonds to reduce all-in borrowing costs to benefit Customers by securing the highest reasonably attainable credit rating available for the Bonds, which is currently a “AAA” rating.

²²⁵ See D.C. Code § 34-1313.04.

²²⁶ See D.C. Code § 34-1313.01(c).

²²⁷ See D.C. Code § 34-1312.02(a).

149. The Commission finds that in order to ensure that the structuring, marketing and pricing of the Bonds results in charges consistent with market conditions and the terms of this Financing Order, it is necessary for the Commission, acting through its designated financial advisor, to have an integral role with respect to the structuring, marketing and pricing of the Bonds.

150. The primary responsibility of the Commission's financial advisor is to ensure that the structuring, marketing and pricing of the Bonds result in charges consistent with market conditions and the terms of this Financing Order. In order to properly advise the Commission, the Commission's financial advisor must participate fully with the District and its financial advisors in all plans and decisions related to the pricing, marketing, and structuring of the Bonds and be provided timely information as necessary to fulfill its obligation to advise the Commission in a timely manner.

151. The District is directed to issue a single Bond issuance as soon as reasonably practicable, absent a material change in market conditions that warrants multiple issuances, but retains the right to issue the Bonds in more than one issuance if the District determines, with input from the Commission's financial advisor, that two issuances are appropriate, provided that no Bonds will be issued on a date more than ten years following the effective date of the Act, *i.e.*, May 3, 2024.

152. The final terms and conditions of the Bonds, including, without limitation, the schedule of principal amortization, credit enhancement, the frequency of principal or interest payments, the interest rates on the Bonds, the manner of sale of the Bonds, the number of credit ratings, and the approval of final Financing Documents, to the extent consistent with the provisions of this Financing Order and the Act, will be determined by the District, with input from the Commission's financial advisor, at the time the Bonds are priced.

E. Issuance Advice Letter to be Provided to Commission

153. Because the actual structure and pricing of the Bonds is not known as of the time this Financing Order is issued, in accordance with Section 303(d) of the Act, by 5:00 p.m. on the next business day after the sale of Bonds approved by this Financing Order, the District will file with the Commission, an Issuance Advice Letter.²²⁸ The Issuance Advice Letter will indicate the final structure of the Bonds and provide the best available estimate of total Ongoing Financing Costs for the first twelve months following issuance, the initial DDOT Improvement Charge to be imposed based upon the final structure of the Bonds and the final Upfront Financing Costs expected to be incurred by the District. Pepco and the District should submit the DDOT Improvement Charge in the Issuance Advice Letter based on the final structure of the Bond issuance and in accordance with the Commission's directive in ¶ 130 of this Financing Order.

154. The District has provided in the Financing Order Application, as an Attachment to the proposed form of the Financing Order (Tab 6), a form of the Issuance Advice Letter. The Commission finds that the form of the Issuance Advice Letter, which is attached as Appendix B

²²⁸ See D.C. Code § 34-1313.03(d).

to this Financing Order, is appropriate and consistent with the requirements of Section 303(d) of the Act and hereby approves it for use and filing by the District.²²⁹

155. The Commission's financial advisor will participate in the pricing and structuring of the Bonds and will engage in a review of the final terms of the proposed transaction. The Commission determines that following such review, the Commission's financial advisor must provide a recommendation letter to the Commission no later than the end of the second business day after the receipt of the Issuance Advice Letter based on all information reasonably available to the financial advisor. The recommendation letter shall affirmatively state the following: (1) whether structuring, marketing and pricing of the transaction are consistent with market conditions for comparable transactions; (2) whether the financial advisor performed all duties required under this Financing Order to be performed prior to delivery of the recommendation; (3) whether the financial advisor performed such due diligence sufficient to ensure that all material decisions made in the transaction by the District and Pepco have been appropriately documented; and (4) whether the final terms and conditions of the transaction are consistent with this Financing Order.

156. The Commission has four complete business days following the filing of the Issuance Advice Letter to complete its review for the purpose of determining that the stated terms are consistent with market conditions for comparable transactions and with this Financing Order. The Issuance Advice Letter shall become effective, upon completion of the Commission's review, on the date of issuance of the Bonds unless, within four complete business days following the filing of the Issuance Advice Letter, the Commission issues an order directing the District not to proceed with the securitization due to the Commission's determination that the stated terms are not consistent with market conditions for comparable transactions or are not consistent with this Financing Order.

F. Security Structure for the Bonds

157. The District will pledge to the Indenture Trustee, as collateral for payment of the Bonds, all right, title and interest of the District in and to the DDOT Improvement Property created pursuant to this Financing Order, and all DDOT Improvement Revenue derived therefrom, as well as certain other moneys in funds and accounts established under the Indenture.

158. The final security structure for the Bonds will be determined by the District in the final Financing Documents.

159. The District shall have the flexibility to establish and fund one or more Reserve Accounts at a level necessary or desirable to achieve: (1) the highest reasonably attainable credit rating on the Bonds; (2) provide benefits greater than their cost; and (3) results in a lower cost of borrowing consistent with market conditions.

160. In accordance with Section 212 of the Act, the Bonds shall not constitute an

²²⁹ See D.C. Code § 34-1313.03(d).

indebtedness of Pepco.²³⁰ Consistent with Section 306 of the Act, upon the issuance of this Financing Order, the Commission shall not consider: (a) the Bonds to be the debt of Pepco; (b) the DDOT Improvement Charge to be revenue or the property or an asset of Pepco; (c) the remittance of the DDOT Improvement Charge to the Collection Account to be an expense of Pepco; or (d) the DDOT Improvement Costs or the Financing Costs incurred by the District in connection with Bonds to be an obligation of Pepco or to be costs included in Pepco's cost of service.²³¹

161. In accordance with Section 207(a) of the Act, the Bonds will not be general obligations of the District and will not be secured by the faith and credit or the taxing power of the District.²³² The Bonds will be special limited obligations of the District payable solely from the DDOT Improvement Property and the other security. The District shall have no obligation to make payments with respect to the Bonds from sources other than the DDOT Improvement Revenue.

G. Financing Costs

162. The estimated Upfront Financing Costs proposed for recovery by the District and described in the record are reasonable and eligible for recovery. The District estimated the Upfront Financing Costs to be approximately \$4.8 million based upon a single issuance of Bonds. The District is given flexibility in determining the final amounts of such Upfront Financing Costs at or about the time of the pricing of the Bonds provided that such Upfront Financing Costs do not exceed \$5.5 million, and any such Upfront Financing Costs, as finally approved by the District, which do not exceed \$5.5 million, unless otherwise approved by the Commission, are authorized and eligible for recovery from the proceeds of the Bonds. The District shall include in the Issuance Advice Letter an estimate of the final Upfront Financing Costs expected to be incurred by the District.

163. The Ongoing Financing Costs described in the record, include, without limitation, any amount required to fund or replenish any reserve account or to pay the costs of any other credit enhancement; any federal, state, or local taxes; payments in lieu of taxes; franchise fees, or license fees imposed on DDOT Improvement Revenue; and any cost related to administering and servicing DDOT Improvement Property and the Bonds, including, without limitation, costs of calculating adjustments of the DDOT Improvement Charge, servicing fees and expenses, trustee fees and expenses, legal fees and expenses, accounting fees and expenses, administrative fees and expenses, fees and expenses of the District's or the Commission's advisors and outside counsel, if any, rating agency fees, and any other related costs not paid from the proceeds of the Bonds.

164. The Commission finds that the Servicing Fee of 0.05% of the initial aggregate par

²³⁰ See D.C. Code § 34-1312.12.

²³¹ See D.C. Code § 34-1313.06.

²³² See D.C. Code § 34-1312.07(a).

amount of the Bonds (without giving effect to any subsequent reduction in the outstanding par amount of the Bonds or any premium) represents a fair level of consideration between Pepco and the District in light of the services to be provided under the Servicing Agreement.

165. Ongoing Financing Costs, other than the Servicing Fee, are not fixed by agreement, and will not be known until after this Financing Order is issued.

166. In the event that a successor Servicing Agent is required to be appointed by the District, the District is authorized to pay any successor Servicing Agent not affiliated with Pepco (or any successor utility providing electric distribution services) a Successor Serving Fee not to exceed 0.60% of the original par amount of the Bonds, unless a higher fee is approved by the Commission.

167. The types of Ongoing Financing Costs, as described in the record, are consistent with the Act and eligible for recovery. Pursuant to the Act and this Financing Order, all actual Ongoing Financing Costs shall be recovered in full from the DDOT Improvement Revenue.

H. DDOT Improvement Property

168. Upon the effective date of this Financing Order, the DDOT Improvement Property is created.

169. Pursuant to Section 101(16) of the Act, DDOT Improvement Property includes the property rights and interest in the District created by the Act and this Financing Order, including, without limitation, (a) the right, title and interest in and to the DDOT Improvement Charge as it may be adjusted from time to time in accordance with this Financing Order, (b) all revenue, collections, claims, payments, money or proceeds of or arising from the DDOT Improvement Charge including the DDOT Improvement Revenue or constituting the DDOT Improvement Charge, regardless of whether such revenue, collection, claims, payments, money or proceeds are billed, received or maintained together with or commingled with other revenue, collections, claims, payments, moneys, or proceeds, and (c) all right to obtain adjustment to the DDOT Improvement Charge under the True-Up Mechanism approved in this Financing Order.²³³

170. The DDOT Improvement Property shall constitute an existing, present property right of the District pursuant to Section 209(a) of the Act.²³⁴

171. All the DDOT Improvement Property is pledged for the repayment of the Bonds and all Ongoing Financing Costs pursuant to Section 209(c) of the Act.²³⁵

172. Consistent with Section 204(j) of the Act and with section 490(a)(4)(B) of the Home Rule Act, upon the effective date of this Financing Order, (i) the Act grants a first priority

²³³ See D.C. Code § 34-1311.01(16).

²³⁴ See D.C. Code § 34-1312.09(a).

²³⁵ See D.C. Code § 34-1312.09(c).

statutory lien to the Indenture Trustee for the benefit of the holders of the Bonds on all DDOT Improvement Property then existing or thereafter arising pursuant to the terms of this Financing Order; (ii) the pledge made and security interest granted in the DDOT Improvement Property created in respect of the Bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action; (iii) the lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and (iv) the security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.²³⁶

173. In accordance with Section 210 of the Act, the District's property ownership interest in the DDOT Improvement Property shall be effective and perfected against all third parties and shall not be affected or impaired by, among other things, the occurrence of any one or more of the following: (i) commingling of DDOT Improvement Charge or DDOT Improvement Revenue with other amounts; (ii) any recourse that Pepco may have against the District; (iii) Pepco's obligation acting in an agency capacity in accordance with the Servicing Agreement to collect DDOT Improvement Revenue and to remit the DDOT Improvement Revenue so collected to the Collection Account; and (iv) any subsequent order of the Commission amending this Financing Order pursuant to the Act.²³⁷

I. Servicing Agreement

174. In accordance with Sections 201(b), 209(a) and 210(3) of the Act, the DDOT Improvement Charge authorized pursuant to this Financing Order will be billed and collected by Pepco, in an agency capacity, pursuant to the Servicing Agreement.²³⁸

175. The Commission finds the terms and conditions of the Servicing Agreement submitted as Tab 5 of the Financing Order Application and attached as Appendix A to this Financing Order are consistent with the Act, commercially reasonable, and appropriate except with respect to the amounts of the Servicing Fee and the Successor Servicing Fee that have been amended by this Financing Order, and will allow the Securitization to be implemented in a manner consistent with achieving the highest reasonably attainable credit rating on the Bonds.

176. The Commission authorizes Pepco to enter into the Servicing Agreement with the District, as amended to be consistent with this Financing Order and subject to the final language agreed to between Pepco and the District, to address any requirements of the rating agencies to achieve the highest reasonably attainable credit rating for the Bonds.

177. Pursuant to Section 201(b) of the Act, (i) all DDOT Improvement Revenue

²³⁶ See D.C. Code § 34-1312.04(j).

²³⁷ See D.C. Code § 34-1312.10

²³⁸ See D.C. Code §§ 34-1312.01(b), 1312.09(a), and 1312.10(3).

collected, or to be collected, by Pepco, shall, upon receipt by Pepco, be held in trust for the benefit of the Indenture Trustee and shall be deemed collected and remitted to the Collection Account in accordance with the Act and the Servicing Agreement; (ii) all DDOT Improvement Revenue so collected, wherever held or deposited and whether having been remitted to the Collection Account or not, is automatically pledged at the time of receipt to the repayment of the Bonds pursuant to the Act and the Indenture; (iii) Pepco shall have no rights in or to the DDOT Improvement Revenue (although Pepco may retain a right of setoff for the payment of any Servicing Agent fees as provided in the Servicing Agreement); (iv) the sole responsibility of Pepco shall be to act in an agency capacity for the collection of the DDOT Improvement Revenue and to remit the DDOT Improvement Revenue to the Collection Account in accordance with the Servicing Agreement; and (v) Pepco shall have no responsibility with respect to the DDOT Improvement Revenue after its remittance to the Collection Account in accordance with the Servicing Agreement.²³⁹

178. Pursuant to Section 209(d) of the Act, in the event of default by Pepco on any required remittance of the DDOT Improvement Revenue to the Collection Account, upon application of an interested party and without limiting any other remedies available to the applying party, a court shall order the sequestration of the DDOT Improvement Revenue with a trustee selected by the District for the benefit of the District and the bondholders and any financing parties. The court's order shall remain in full force and effect notwithstanding any bankruptcy, reorganization, or other insolvency proceeding with respect to Pepco or any affiliate thereof.²⁴⁰

179. Pursuant to Section 301(a)(9) of the Act, any successor to Pepco will be bound by the terms of the Servicing Agreement and shall perform and satisfy all obligations of Pepco under the Servicing Agreement and this Financing Order in the same manner and to the same extent as Pepco. A successor shall include any other entity that provides electric distribution services whether pursuant to any reorganization, bankruptcy, or other insolvency proceeding, any merger or acquisition, sale or other business combination, or transfer by operation of law, as a result of utility restructuring or otherwise. The Commission will enforce the obligations imposed by this Financing Order, its applicable substantive rules, and statutory provisions upon any successor.²⁴¹

180. The DDOT Improvement Charge billing, collection, and remittance procedures under the Servicing Agreement are reasonable.

181. The annual Servicing Fee, payable to Pepco pursuant to the terms of the Servicing Agreement in the amount of 0.05% of the original par amount of the Bonds, is just and reasonable. Any late charges, and any interest earned on the DDOT Improvement Revenue prior to its transfer to the Collection Account shall be applied to the DDOT Improvement Revenue

²³⁹ See D.C. Code § 34-1312.01(b).

²⁴⁰ See D.C. Code § 34-1312.09(d).

²⁴¹ See D.C. Code § 34-1313.01(a)(9).

Requirement.

182. Pursuant to Section 301(a)(10) of the Act, the Servicing Agent will be required to file with the District and the Indenture Trustee monthly and semi-annual reports providing a summary of the DDOT Improvement Charge collected and remitted to the Collection Account, in the forms attached to the Servicing Agreement.²⁴² The Servicing Agent will also be required to file with the District and the Indenture Trustee copies of all True-Up Requests, and certain other information required by the Servicing Agreement.

183. The servicing arrangements as described in this Financing Order will help ensure the timely and full payment of the Bonds and other Ongoing Financing Costs, thus enhancing their credit quality and helping to assure that the Bonds obtain the highest reasonably attainable credit rating.

184. Upon the maturity of the Bonds and upon the discharge of all obligations in respect thereof and payment of all Financing Costs, the District shall notify the Commission and the Commission thereafter shall direct Pepco to terminate further collections and remittances of the DDOT Improvement Charge.

J. The DDOT Improvement Charge: Imposition and Collection and Nonbypassability; Tariff

185. Pepco and any successor, as Servicing Agent, are authorized to impose, bill and collect the DDOT Improvement Charge from Customers in the manner provided in this Financing Order and the Servicing Agreement.

186. The DDOT Improvement Charge will be a separate line item on Customer bills.

187. In accordance with Section 303(e) of the Act, the DDOT Improvement Charge shall not be billed by Pepco before the issuance of the Bonds.²⁴³

188. The DDOT Improvement Charge will be imposed, billed and collected until the Bonds and all other Ongoing Financing Costs have been paid in full.

189. Consistent with Sections 101(13) and 305(c) of the Act, for so long as the Bonds are outstanding and any Financing Costs have not been paid in full, the DDOT Improvement Charge will be a non-bypassable surcharge collected from all Customers, pursuant to Section 301(a)(4) of the Act.²⁴⁴ In the event that a successor discount program for RAD customers is approved by the Commission, Pepco, as Servicing Agent, will reflect any changes to the allocation in the next True-Up Request.

²⁴² See D.C. Code § 34-1313.01(a)(10).

²⁴³ See D.C. Code § 34-1313.03(e).

²⁴⁴ See D.C. Code §§ 34-1311.01(13), 1313.05(c), and 1313.01(a)(4).

190. In furtherance of the non-bypassability required by the Act, (i) regardless of who is responsible for billing the DDOT Improvement Charge, the Customers shall continue to be responsible for the DDOT Improvement Charge; (ii) if a third party meters and bills for the DDOT Improvement Charge, the electric company, as Servicing Agent, must have access to information on billing and usage by electric distribution customers to provide for proper reporting to the District and to perform its obligations as Servicing Agent; (iii) in the case of a third party default, billing responsibilities must be promptly transferred to another party to minimize potential losses; and (iv) the failure of electric distribution customers to pay the DDOT Improvement Charge shall allow service termination by the electric company of the Customers failing to pay the DDOT Improvement Charge in accordance with Commission-approved service termination rules and orders and the electric company's customary billing practices and procedures. To ensure the highest reasonably attainable credit ratings on the Bonds will be achieved, the DDOT Improvement Charge will be collected in a manner that will not adversely affect the rating on the Bonds.

191. The DDOT Improvement Charge established by this Financing Order is just and reasonable.

192. In the direct testimony of Pepco witness Janocha, the Applicant has proposed a form of tariff (the "Tariff"), submitted as PEPCO Exhibit (B)-2 of the Financing Order Application, to be used and amended from time to time to implement the DDOT Improvement Charge.²⁴⁵

193. The Tariff is generally consistent with the Act and the record, and, as amended from time to time in accordance with this Financing Order, is approved for use by the Applicant in this Financing Order.²⁴⁶

K. Allocation of Costs to be Recovered by DDOT Improvement Charge

194. As required by Section 301(a)(4) of the Act, all costs to be recovered through the DDOT Improvement Charge will be allocated among Customer classes, based upon the electric distribution service customer class cost allocations approved by the Commission in Pepco's then most recent base rate case, currently *Formal Case No. 1103*, as clarified in Order No. 17697 and this Financing Order.

195. The DDOT Improvement Charge will be a volumetric charge collected as provided in the proposed Tariff authorized as amended pursuant to this Financing Order.²⁴⁷

196. The methodology of allocating the DDOT Improvement Charge among Customer classes is described in greater detail in the direct testimony of Pepco witness Janocha and this

²⁴⁵ PEPCO Exhibit (B)-2 was initially submitted on August 1, 2014, and subsequently revised on August 25, 2014, in Pepco's errata filing.

²⁴⁶ See D.C. Code § 34-1313.01(a)(4).

²⁴⁷ See paragraph 130, *supra*.

Financing Order.

197. In the event that Pepco files a new base rate case, the cost allocations approved in the new base rate case shall be reflected in the True-Up Mechanism and used to calculate the DDOT Improvement Charge in the next True-Up Adjustment.

198. The Commission finds that the allocation methodology, as set forth in the Record and incorporated into the True-Up Mechanism approved in this Financing Order, is reasonable and consistent with the Act.

L. True-Up Adjustment Mechanism

199. In the direct testimony of Pepco witness Janocha and in the direct testimony of District witness Barnette, in PEPCO Ex. (B)-4, as well as in the proposed form of the Servicing Agreement and Financing Order found in Tabs 5 and 6, respectively, to the Financing Order Application, the Applicant sets forth, in detail, the proposed True-Up Mechanism pursuant to which periodic true-up adjustments to the DDOT Improvement Charge are to be calculated and implemented.

200. In accordance with Section 314 of the Act, this Financing Order and the Servicing Agreement, Pepco, as agent for the District, will be required to file with the Commission the requests for approval of a schedule applying the True-Up Mechanism to the then effective DDOT Improvement Charge (a “True-Up Adjustment”).²⁴⁸

201. The Applicant has requested that Pepco, as Servicing Agent, be required to file for True-Up Adjustments, semi-annually, and quarterly, in the event the final maturing tranche of Bonds is outstanding after its expected maturity date, provided that the first True-Up Adjustment may occur up to twelve months after the date of issuance of the Bonds. If the District or the Servicing Agent identifies a material deviation in actual DDOT Improvement Revenue that may result in a shortfall from the DDOT Improvement Revenue Requirements, the Servicing Agent, at the direction of the District, shall, or the District may, at any time, file a request with the Commission for a True-Up Adjustment.

202. The Applicant proposes to use the True-Up Request, in the form attached as Annex IV to the Servicing Agreement, to implement each True-Up Adjustment. The True-Up Request will include all of the information and exhibits required by Section 314(b) of the Act.²⁴⁹ The True-Up Request, in the form attached to the Servicing Agreement, is approved for use in connection with all True-Up Adjustments.

203. As provided in Section 314(c) of the Act, the Commission’s review of a True-Up Request shall be limited to a determination of whether there is any mathematical error in the

²⁴⁸ See D.C. Code § 34-1313.14.

²⁴⁹ See D.C. Code § 34-1313.14(b).

application of the True-Up Mechanism.²⁵⁰

204. As provided in Section 314(d) of the Act: (a) the Commission will act upon a True-Up Request within 20 days of the end of the comment period; (b) if the Commission does not act within this 20-day period to correct any mathematical error, the True-Up Request will be deemed approved; and (c) the DDOT Improvement Charge as set forth in a True-Up Request shall take effect, subject to adjustment on the date the True-Up Request is filed with the Commission.²⁵¹

205. In connection with any True-Up Request, the Commission shall not require any refund of any DDOT Improvement Charge previously paid, and any overpayment shall be reflected in an adjustment to a DDOT Improvement Charge.

206. The proposed form of public notice of a True-Up Adjustment (the “Public Notice”) required by Section 314(b) of the Act is included in Annex IV to the Servicing Agreement.²⁵² The Commission finds that the Public Notice is consistent with the Act and this Financing Order and approves it for use in connection with any True-Up Adjustment.

207. In all cases there will be no cap on the DDOT Improvement Charge resulting from the application of the True-Up Mechanism.

208. In accordance with Section 314(e) of the Act, no True-Up Adjustment will in any way affect the irrevocability of this Financing Order.²⁵³

209. The True-Up Mechanism as described in the record and in this Financing Order, will help ensure the timely and full payment of the Bonds and all other Ongoing Financing Costs, thus enhancing their credit quality and helping to assure that the Bonds obtain the highest reasonably attainable credit rating, and is approved.

M. Use of Bond Proceeds

210. Upon the issuance of Bonds, in accordance with Section 202(b) of the Act, the proceeds from the sale of the Bonds shall be applied: (a) to pay the Upfront Financing Costs, including to fund the Reserve Account; and (b) for deposit into a segregated account (separate and distinct from the Collection Account) established and held by the Indenture Trustee and used to pay or reimburse DDOT Improvement Costs described in this Financing Order (“DDOT Improvement Fund”).²⁵⁴

²⁵⁰ See D.C. Code § 34-1313.14(c).

²⁵¹ See D.C. Code § 34-1313.14(d).

²⁵² See D.C. Code § 34-1313.14(b).

²⁵³ See D.C. Code § 34-1313.14(e).

²⁵⁴ See D.C. Code § 34-1312.02(b).

211. Bond proceeds shall be disbursed from the DDOT Improvement Fund by the Indenture Trustee upon receipt of a requisition completed by DDOT, and approved by the Treasurer of the District (or his or her designee) certifying that expenditures have been made for goods and services that constitute DDOT Improvement Costs described in this Financing Order.

N. Accounting Following Repayment of the Bonds

212. The District's proposal that once the Bonds and all Financing Costs relating to the Bonds have been paid in full, Pepco, in its capacity as Servicing Agent, will credit any amounts remaining in the DDOT Improvement Fund to then-current Customers based upon the then existing allocation of costs used in the True-Up Mechanism, is reasonable and consistent with the Act.

VII. CONCLUSIONS OF LAW

213. Pepco is authorized to file the Financing Order Application under Sections 301(a) and 302(b) of the Act.²⁵⁵

214. The Commission has jurisdiction and authority over the Financing Order Application pursuant to Sections 301 and 303 of the Act.²⁵⁶

215. The Commission has authority to approve this Financing Order under Section 303 of the Act.²⁵⁷

216. This Financing Order satisfies all of the requirements of the Act, including, without limitation, Section 301.²⁵⁸

217. Pursuant to Section 209(a) of the Act, upon the effective date of this Financing Order, the DDOT Improvement Property created by this Financing Order shall constitute an existing, present property right of the District.²⁵⁹

218. Pursuant to Section 101(16) of the Act: DDOT Improvement Property includes the property rights and interest of the District created by the Act and this Financing Order, including, without limitation; (a) the right, title and interest in and to the DDOT Improvement Charge as it may be adjusted from time to time in accordance with this Financing Order; (b) all revenue, collections, claims, payments, money or proceeds of or arising from the DDOT

²⁵⁵ See D.C. Code §§ 34-1313.01(a) and 1313.02(b).

²⁵⁶ See D.C. Code §§ 34-1313.01 and 1313.03.

²⁵⁷ See D.C. Code § 34-1313.03.

²⁵⁸ See D.C. Code § 34-1313.01.

²⁵⁹ See D.C. Code § 34-1312.09(a).

Improvement Charge including the DDOT Improvement Revenue or constituting DDOT Improvement Charge, regardless of whether such revenue, collection, claims, payments, money or proceeds are billed, received or maintained together with or commingled with other revenue, collections, claims, payments, moneys, or proceeds; and (c) all right to obtain adjustment to the DDOT Improvement Charge under the True-Up Mechanism approved in this Financing Order.²⁶⁰

219. Pursuant to Section 209(c) of the Act, all of the DDOT Improvement Property is pledged for the repayment of the Bonds or payment of Financing Costs.²⁶¹

220. Pursuant to Section 204(j) of the Act: (a) upon the effective date of this Financing Order, a first priority statutory lien is granted to the Indenture Trustee for the benefit of the holders of the Bonds on all DDOT Improvement Property then existing or thereafter arising pursuant to the terms of this Financing Order; (b) a pledge made and security interest granted in the DDOT Improvement Property created in respect of the Bonds (or pursuant to any related Financing Document) shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action; (c) the lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and (d) the security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.²⁶²

221. In accordance with Section 210 of the Act, the District's property ownership interest in the DDOT Improvement Property shall be effective and perfected against all third parties and shall not be affected or impaired by, among other things, the occurrence of any one or more of the following: (a) commingling of DDOT Improvement Charge or DDOT Improvement Revenue with other amounts; (b) any recourse that Pepco may have against the District; (c) Pepco's obligation as Servicing Agent under the Servicing Agreement to collect DDOT Improvement Revenue and to remit the DDOT Improvement Revenue so collected to the Collection Account; and (d) any subsequent order of the Commission amending this Financing Order pursuant to the Act.²⁶³

222. The District may issue Bonds in accordance with this Financing Order, the Act and Section 490 of the Home Rule Act.

223. The DDOT Improvement Costs described in this Financing Order, whether approved in the initial Triennial Plan or any subsequent triennial plan approved by the Commission, are eligible for recovery from Bond proceeds under the Act.

²⁶⁰ See D.C. Code § 34-1311.01(16).

²⁶¹ See D.C. Code § 34-1312.09(c).

²⁶² See D.C. Code § 34-1312.04(j).

²⁶³ See D.C. Code § 34-1312.10.

224. The Upfront Financing Costs and Ongoing Financing Costs described in this Financing Order are eligible for recovery under the Act.

225. The Bonds issued pursuant to this Financing Order will be “Bonds” under the Act, and will be entitled to all of the protections of the Act.

226. The methodology and calculation approved in this Financing Order for allocating the DDOT Improvement Charge among Pepco’s distribution customers, other than members of the RAD customer class or any succeeding discount program, is reasonable and satisfies the requirements of the Act, including Section 301(a)(4).²⁶⁴

227. The True-Up Mechanism proposed by the Applicant and as approved by this Financing Order, is reasonable and satisfies the requirements of the Act, including Section 314.²⁶⁵

228. The Servicing Agreement approved in this Financing Order satisfies the requirements of the Act, including Section 301(a)(9).²⁶⁶

229. Pursuant to Section 304, this Financing Order is irrevocable and the Commission may not reduce, impair, or terminate the DDOT Improvement Property approved in this Financing Order or impair the collection or recovery of the DDOT Improvement Charge or DDOT Improvement Revenue until the Bonds issued pursuant to the Act and this Financing Order have been paid in full.²⁶⁷

230. This Financing Order will be operative and in full force and effect from its date of issuance by the Commission and shall remain in effect until the Bonds and all Financing Costs related to the Bonds have been paid in full.

VIII. ORDERS AND APPROVALS

A. Orders on Contested Issues

231. In accordance with the findings and conclusions rendered in Order No. 17697, and in ¶¶ 76-82 herein, the Commission hereby **DENIES** the protest of AOBA and GSA regarding the revenue requirement allocation and the DDOT Improvement Charge proposed by Pepco in this proceeding (*i.e.*, the appropriate cost allocation methodology, the use of a separate MMA class rate design, and the use of forecasted sales data).

232. In accordance with the findings and conclusions rendered in Order No. 17697, as

²⁶⁴ See D.C. Code § 34-1313.01(a)(4).

²⁶⁵ See D.C. Code § 34-1313.14.

²⁶⁶ See D.C. Code § 34-1313.01(a)(9).

²⁶⁷ See D.C. Code § 34-1313.04.

discussed in ¶ 83 herein, Verizon shall bear the costs associated with relocating its facilities to accommodate the DC PLUG infrastructure.

233. In accordance with the discussion presented in ¶¶ 84-87 herein, the Commission hereby **GRANTS** the protests of OPC and AOBA regarding the reasonableness of the proposed Servicing Fee and determines that Pepco's proposed Servicing Fee of 0.075% (7.5 basis points) is not just and reasonable, and, therefore, reduces the Servicing Fee to 0.05% (5 basis points).

234. In accordance with the discussion presented in ¶¶ 88 herein, the Commission determines that Pepco's proposed Successor Servicing Fee of up to 0.75% (75 basis points) is not just and reasonable, and therefore, reduces the maximum Successor Servicing Fee to 0.60% (60 basis points), unless a higher fee is approved by the Commission.

235. In accordance with the discussion presented in ¶ 89 herein, the Commission **DENIES** the request of OPC and AOBA to base Pepco's Servicing Fee on incremental costs and **DENIES** OPC's request that any fees in excess of Pepco's incremental costs be refunded to ratepayers through a true up mechanism. The Commission **ACCEPTS**, as reasonable, Pepco's proposal to credit back any excess revenue in its next rate base case.

236. In accordance with the discussion presented in ¶¶ 90-93 herein, the Commission hereby **DENIES** the protest of OPC and AOBA and directs that, absent a material change in market conditions, the District issue the Bonds in a single issuance as soon as reasonably practicable.

237. In accordance with the discussion presented in ¶ 94 herein, the Commission hereby **DENIES** the protest of AOBA and determines that Pepco's proposed irrevocable, volumetric surcharge on all non-RAD Customers is non-bypassable within the meaning of the Act.

B. Orders and Approvals on Financing Order

238. The Financing Order Application is **APPROVED**, as modified herein.

239. In accordance with Section 301(c) of the Act, except to implement any True-Up Adjustment in accordance with this Financing Order, this Financing Order shall not be amended, modified, or terminated by any subsequent action of this Commission nor shall the Commission reduce, impair, postpone, terminate, or otherwise adjust the DDOT Improvement Charge approved in this Financing Order.²⁶⁸

240. The issuance of the Bonds and the consummation of the Securitization transaction described in this Financing Order are approved subject to the terms and conditions stated in this Financing Order.

²⁶⁸ See D.C. Code § 34-1313.01(c).

i. DDOT Improvement Property and DDOT Improvement Revenue

241. In accordance with Section 209(a) of the Act, upon the date of this Financing Order, the DDOT Improvement Property created by this Financing Order constitutes an existing, present property right of the District of Columbia.²⁶⁹

242. In accordance with Section 201(c) and Section 203(b) of the Act, the DDOT Improvement Revenue shall be irrevocably pledged as security for the repayment of the Bonds and all other Ongoing Financing Costs, which security interest shall attach at the time of Pepco's receipt of the DDOT Improvement Revenue.²⁷⁰

243. In accordance with Section 201(b) of the Act, Pepco has, and shall have, no rights in or to the DDOT Improvement Revenue and Pepco's sole responsibility shall be to act in an agency capacity for the collection of the DDOT Improvement Revenue and to remit the DDOT Improvement Revenue to the Collection Account in accordance with the Servicing Agreement.²⁷¹

244. All DDOT Improvement Revenue collected, or to be collected, by Pepco in its capacity as Servicing Agent shall, upon receipt, be held in trust for the benefit of the Indenture Trustee and shall be deemed collected and remitted to the Collection Account in accordance with the Act and the Servicing Agreement.

245. In accordance with Section 202(a) of the Act, the District is authorized to issue Bonds in a total aggregate par amount not to exceed \$375 million, which Bonds may be issued at any time and from time to time prior to May 3, 2024.²⁷² Given favorable market conditions that currently exist, the District is directed to issue a single Bond issuance as soon as reasonably practicable, absent a material change in market conditions that warrants multiple issuances. The Bonds are authorized to be issued to pay the Upfront Financing Costs relating to issuing and delivering the Bonds and to pay or reimburse the DDOT Improvement Costs described in this Financing Order.

246. In accordance with Section 204(j) of the Act: (a) as of the date of this Financing Order, a first priority statutory lien is granted to the Indenture Trustee for the benefit of the holders of the Bonds on all DDOT Improvement Property then existing or thereafter arising pursuant to the terms of this Financing Order; (b) a pledge made and security interest granted in the DDOT Improvement Property created in respect of the Bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action; (c) the lien of the pledge shall be valid, binding, and perfected as against all

²⁶⁹ See D.C. Code § 34-1312.09(a).

²⁷⁰ See D.C. Code §§ 34-1312.01(c) and 1312.03(b).

²⁷¹ See D.C. Code § 34-1312.01(b).

²⁷² See D.C. Code § 34-1312.02(a).

parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and (d) the security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.²⁷³

247. In accordance with Section 209(c) of the Act, all of the DDOT Improvement Property shall be pledged for the repayment of the Bonds and the payment of all other Ongoing Financing Costs.²⁷⁴

248. In accordance with Section 204(h) of the Act, the District covenants and agrees that it will not limit or alter the DDOT Improvement Revenue pledged to secure the Bonds or the basis on which the DDOT Improvement Revenue is collected or allocated, will not take any action to impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the Bonds, and will not in any way impair the rights or remedies of the holders of the Bonds, until the principal of and interest on the Bonds, together with all other Ongoing Financing Costs, including without limitation, all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the Bonds, are fully met and discharged.²⁷⁵

ii. The Bonds

249. The issuance by the District of Bonds in an aggregate par amount not to exceed \$375 million is approved, and the Bonds may be issued in one or more series and tranches subject to the terms and conditions of this Financing Order. The District is directed to issue a single Bond issuance as soon as reasonably practicable unless there is a material change in market conditions that warrants multiple Bond issuances, provided, however, that no Bonds will be issued beyond ten (10) years of the effective date of the Act in accordance with Section 202(a) of the Act, *i.e.*, May 3, 2024.²⁷⁶

250. The final terms and conditions of the Bonds, including, without limitation, the schedule of principal amortization, expected and legal maturities, size of any reserve account or accounts, the frequency of principal or interest payments, the interest rates on the Bonds, the manner of sale of the Bonds, the number of credit ratings, and the approval of final Financing Documents, to the extent consistent with the provisions of this Financing Order and the Act, shall be determined by the District with input from the Commission's financial advisor at the time the Bonds are priced.

251. In accordance with Section 212 of the Act, the Bonds shall not constitute an

²⁷³ See D.C. Code § 34-1312.04(j).

²⁷⁴ See D.C. Code § 34-1312.09(c).

²⁷⁵ See D.C. Code § 34-1312.04(h).

²⁷⁶ See D.C. Code § 34-1312.02(a).

indebtedness of Pepco.²⁷⁷

252. Consistent with Section 306 of the Act, upon the issuance of this Financing Order, (a) the Bonds shall not be considered to be the debt of Pepco; (b) the DDOT Improvement Charge shall not be considered to be revenue or the property or an asset of Pepco; (c) the remittance of the DDOT Improvement Charge to the Collection Account shall not be considered to be an expense of Pepco; and (d) the DDOT Improvement Costs and the financing and other costs incurred by the District in connection with Bonds shall not be considered to be an obligation of Pepco or costs included in Pepco's cost of service.²⁷⁸

253. In accordance with Section 207(a) of the Act, the Bonds shall not be general obligations of the District and shall not be secured by the faith and credit or the taxing power of the District; rather the Bonds shall be special limited obligations of the District payable solely from the DDOT Improvement Property, and the District shall have no obligation to make payments with respect to the Bonds from sources other than the DDOT Improvement Revenue.²⁷⁹

iii. Proceeds of the Bonds

254. The proceeds from the issuance of the Bonds authorized by this Financing Order, less the Upfront Financing Costs, shall be remitted to the Indenture Trustee and used to pay DDOT Improvement Costs approved by the Commission in the initial Triennial Plan, and such additional activities as may be approved by the Commission in subsequent triennial Underground Infrastructure Improvement Projects Plans submitted by Pepco and DDOT, jointly, pursuant to Section 307(a) of the Act.²⁸⁰

255. No expenditure of Bond proceeds in violation of this Financing Order shall in any way affect or impair the DDOT Improvement Property or the rights of the District or the bondholders thereto, which are irrevocable.

iv. Reports

256. In accordance with Section 303(d) of the Act, the District shall file with the Commission, not later than 5:00 p.m. on the next business day after the sale of any series of Bonds, an Issuance Advice Letter, substantially in the form approved by this Financing Order.²⁸¹ If the DDOT Improvement Charge confirmed in the Issuance Advice Letter, differs from the estimated DDOT Improvement Charge in the record, the DDOT Improvement Charge shall be

²⁷⁷ See D.C. Code § 34-1312.12.

²⁷⁸ See D.C. Code § 34-1313.06.

²⁷⁹ See D.C. Code § 34-1312.07(a).

²⁸⁰ See D.C. Code § 34-1313.07(a).

²⁸¹ See D.C. Code § 34-1313.03(d).

adjusted by the Commission consistent with the DDOT Improvement Charge contained in the Issuance Advice Letter.

257. The Commission's financial advisor shall provide a recommendation letter to the Commission no later than the end of the second business day after the receipt of the Issuance Advice Letter based on all information reasonably available to the financial advisor stating whether the structuring, marketing and pricing of the transaction are consistent with market conditions and this Financing Order.

258. The Issuance Advice Letter shall become effective upon completion of the Commission's review, for the purpose of establishing that the stated terms are consistent with market conditions for comparable transactions and with this Financing Order, on the date of issuance of the Bonds unless within four complete business days following the filing of the Issuance Advice Letter, the Commission issues an order directing the District not to proceed with the securitization based on its determination that the terms of the transaction are not consistent with market conditions for comparable transactions and/or with this Financing Order.

259. In accordance with Section 202(d) of the Act, following the issuance of the Bonds and continuing until the proceeds thereof have been disbursed, no later than December 31 of each year, DDOT shall file with the Commission an accounting report detailing DDOT's cumulative receipt of the Bond proceeds during the previous fiscal year and DDOT's cumulative expenditures of those proceeds.²⁸²

v. *Servicing of the Bonds*

260. Pursuant to Section 201(b) of the Act, Pepco shall have no rights in or to the DDOT Improvement Revenue and Pepco's sole responsibility shall be to act in an agency capacity for the collection and remittance of the DDOT Improvement Revenue in accordance with the Servicing Agreement.²⁸³

261. All DDOT Improvement Revenue collected, or to be collected, by Pepco in its capacity as Servicing Agent shall upon receipt be held in trust for the benefit of the Indenture Trustee and shall be deemed collected and remitted to the Collection Account in accordance with the Act and the Servicing Agreement.

262. In accordance with Section 201(c) of the Act, Pepco shall collect and remit to the Collection Account payments received by Pepco for the DDOT Improvement Revenue promptly following receipt of such payment in accordance with the Servicing Agreement and Pepco shall have no responsibility with respect to the DDOT Improvement Revenue after its remittance to the Collection Account in accordance with the Servicing Agreement.²⁸⁴

²⁸² See D.C. Code § 34-1312.02(d).

²⁸³ See D.C. Code § 34-1312.01(b).

²⁸⁴ See D.C. Code § 34-1312.01(c).

263. The form of Servicing Agreement set forth in the Appendix A to this Order and the additional servicing responsibilities set forth in this Order are approved and Pepco is authorized to enter into the Servicing Agreement with the District, as amended by this Financing Order and subject to the final language agreed to between Pepco and the District to address any requirements of the rating agencies to achieve the highest reasonably attainable ratings for the Bonds. Pepco shall file with the Commission the final executed copy of the Servicing Agreement within ten (10) business days following issuance of the Bonds.

264. In accordance with Section 201(b) of the Act, in the event Pepco fails to collect and remit the DDOT Improvement Revenue to the Collection Account, the District may remove Pepco as the Servicing Agent under and in accordance with the Servicing Agreement, but the District shall have no recourse against Pepco's assets.²⁸⁵ Any successor Servicing Agent which is not affiliated with Pepco (or any successor utility providing electric distribution services) may be paid a Successor Servicing Fee which shall not exceed 0.60% per annum of the original par amount of the Bonds, unless a higher fee is approved by the Commission.

265. The Servicing Fee of 0.05% is hereby approved as reasonable and shall constitute an Ongoing Financing Cost.

266. The District shall provide, or cause to be provided, to Pepco on a timely basis the information regarding the DDOT Improvement Revenue Requirement required by Section 302(b)(1) of the Act and the Servicing Agreement.²⁸⁶

267. This Financing Order, as well as all of obligations under the Servicing Agreement shall be binding upon any successor to Pepco, as described in this Financing Order. Any such successor shall perform and satisfy all obligations of Pepco under the Servicing Agreement and this Financing Order, in the same manner and to the same extent as Pepco. The obligations imposed by this Financing Order, the applicable substantive rules, and the statutory provisions shall be enforced against Pepco or any successor thereto.

268. If any third party is entitled to bill and collect the DDOT Improvement Charge, any third-party billing and collection shall be conducted in a manner that will not result in a downgrade or withdrawal of the then-current ratings on the Bonds and the Commission shall enforce the terms of this Financing Order to ensure the non-bypassability and collection of the DDOT Improvement Charge.

vi. DDOT Improvement Charge: Establishment and Adjustment; Tariff

269. The DDOT Improvement Charge as set forth in this Financing Order is approved; provided, however, if the DDOT Improvement Revenue confirmed in the Issuance Advice Letter differs from the estimated DDOT Improvement Revenue Requirement in this Financing Order, then the Commission shall adjust the DDOT Improvement Charge consistent with the DDOT

²⁸⁵ See D.C. Code § 34-1312.01(b).

²⁸⁶ See D.C. Code § 34-1313.02(b)(1).

Improvement Revenue contained in the Issuance Advice Letter as prescribed by Section 303(d) of the Act and this Financing Order.²⁸⁷

270. The District shall impose and Pepco or its successors, as agent for the District, shall bill and collect the DDOT Improvement Charge in an amount sufficient to provide for the timely payment of principal and interest on the Bonds together with all other Ongoing Financing Costs, as approved in this Financing Order.

271. The DDOT Improvement Charge shall be imposed commencing upon the day the Bonds are issued, and shall continue to be collected until all Bonds and any other Ongoing Financing Costs have been paid in full.

272. In accordance with Section 301(a)(7) of the Act, upon the issuance of the Bonds, Pepco shall bill and collect from all of its distribution customers other than members of the RAD customer class or any succeeding discount program, a separate DDOT Improvement Charge which, consistent with Section 301(a)(4) of the Act, is assessed in accordance with the Customer class cost allocations approved by the Commission in Pepco's most recent base rate case, *Formal Case No. 1103*, as described in this Financing Order.²⁸⁸

273. In the event that Pepco files a new base rate case, the cost allocations approved in the base rate case shall be reflected in the True-Up Mechanism and used to calculate the DDOT Improvement Charge in subsequent True-Up Adjustments.

274. Pepco or its successor, as agent for the District, shall adjust the DDOT Improvement Charge using the True-Up Mechanism approved in this Financing Order (and pursuant to the Servicing Agreement), to ensure the timely payment of principal and interest on the Bonds together with all other Ongoing Financing Costs, and there shall be no cap on the DDOT Improvement Charge.

275. The True-Up Request, in the form attached as Annex IV to the Servicing Agreement, is consistent with the Act and is approved for use in connection with each True-Up Adjustment.

276. In accordance with Section 314(c) of the Act, the Commission's review of a True-Up Request shall be limited to a determination of whether there is any mathematical error in the application of the True-Up Mechanism to the DDOT Improvement Charges.²⁸⁹ Pursuant to Section 314(d) of the Act, the DDOT Improvement Charge set forth in a True-Up Request shall take effect, subject to adjustment, on the date the True-Up Request is filed with the Commission.²⁹⁰

²⁸⁷ See D.C. Code § 34-1313.03(d).

²⁸⁸ See D.C. Code §§ 34-1313.01(a)(4) and (7).

²⁸⁹ See D.C. Code § 34-1313.14(c).

²⁹⁰ See D.C. Code § 34-1313.14(d).

277. Consistent with Section 201(f) of the Act, any DDOT Improvement Revenues held in the Collection Account in excess of amounts necessary to satisfy the then DDOT Improvement Revenue Requirement, shall be applied to reduce the DDOT Improvement Charge in the next True-Up Adjustment in the manner provided in the True-Up Mechanism.²⁹¹

278. The Applicant's proposed tariff is generally consistent with the Act and with this Financing Order, and the final tariff shall be included with the District's Issuance Advice Letter and filed with the Commission for use by the Applicant.

vii. Financing Cost Recovery

279. The District shall recover from the proceeds of the Bonds the actual Upfront Financing Costs as described in this Financing Order.

280. The District shall recover in full, through the imposition and collection of the DDOT Improvement Charge, the actual Ongoing Financing Costs as described in this Financing Order.

viii. Finality and Irrevocability; Commission Guarantee

281. In accordance with Section 304 of the Act, this Financing Order shall be irrevocable and shall not reduce, impair, or terminate the DDOT Improvement Property approved in this Financing Order or impair the collection or recovery of the DDOT Improvement Charge or DDOT Improvement Revenue until the Bonds issued pursuant to this Financing Order have been paid in full and all Financing Costs relating to the Bonds have been paid in full.²⁹² No adjustment through the True-Up Mechanism shall affect the irrevocability of this Financing Order.

282. In accordance with Section 301(c) of the Act, except to implement any True-Up Request in accordance with this Financing Order, this Financing Order shall not be amended, modified, or terminated by any subsequent action of the Commission; nor shall the DDOT Improvement Charge approved in this Financing Order be reduced, impaired, postponed, terminated, or otherwise adjusted by the Commission.²⁹³

283. All necessary actions shall be taken pursuant to this Financing Order and in accordance with the Act to ensure that DDOT Improvement Revenues are sufficient to pay the Bonds and all other Ongoing Financing Costs on a timely basis.

²⁹¹ See D.C. Code § 34-1312.01(f).

²⁹² See D.C. Code § 34-1313.04.

²⁹³ See D.C. Code § 34-1313.01(c).

ix. Accounting for Certain Benefits

284. Any amounts remaining in the DDOT Underground Electric Company Infrastructure Improvement Fund after the Bonds are no longer outstanding and the related DDOT Improvement Costs and the related Financing Costs have been paid in full shall be released to Pepco or its successor which shall credit such amount to then-current Customers in the same manner as the DDOT Improvement Charge is then being allocated among such non-RAD Customers.

x. Motions for Relief Denied; Effective Date

285. All motions, requests for entry of specific findings of fact or conclusions of law, and any other requests for general or specific relief not expressly granted herein, are **DENIED**.

286. This Financing Order shall become effective for all purposes immediately.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

APPENDIX A - TO FINANCING ORDER

SERVICING AGREEMENT

DDOT PROPERTY SERVICING AGREEMENT

by and between

**DISTRICT OF COLUMBIA,
Issuer**

and

**POTOMAC ELECTRIC POWER COMPANY,
Servicing Agent**

Dated as of [closing date]

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Annexes:

Annex I	Definitions
Annex II	Servicing Procedures
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Annex IV	Form of True-Up Request
Annex V	Form of Public Notice of True-Up Request

This DDOT PROPERTY SERVICING AGREEMENT (this “Agreement”), dated as of [closing date], is between the DISTRICT OF COLUMBIA, a municipal corporation, as issuer (the “Issuer”), and POTOMAC ELECTRIC POWER COMPANY (“Pepco”), a District of Columbia and Virginia corporation, in the capacity as agent for the Issuer (the “Servicing Agent”).

RECITALS

WHEREAS, pursuant to the Electric Company Infrastructure Improvement Financing Act of 2014, D.C. Law 20-102 (effective May 3, 2014) (the “Act”), the Issuer intends to issue under an indenture, dated [insert date] (the “Indenture”), between the Issuer and [insert name of bank], as trustee (the “Indenture Trustee”), in one or more series, revenue bonds in an aggregate par amount not to exceed \$375,000,000 (the “Bonds”), the proceeds of which will be used by the Issuer for the purposes set forth in the Act;

WHEREAS, the principal and interest on the Bonds will be paid from the DDOT Underground Electric Company Infrastructure Improvement Revenue (as defined by the Act and referred to herein as the “DDOT Improvement Revenue”) derived from the imposition of a DDOT Underground Electric Company Infrastructure Improvement Charge (as defined by the Act and referred to herein as the “DDOT Improvement Charge”) to be billed and collected by the Servicing Agent for the account of the Issuer;

WHEREAS, the Bonds will be secured by a first priority security interest granted by the Issuer to the Indenture Trustee for the benefit of the holders of the Bonds in the DDOT Underground Electric Company Infrastructure Improvement Property (as defined by the Act and referred to herein as the “DDOT Improvement Property”), which in accordance with the Act is the sole and exclusive property of the Issuer;

WHEREAS, the Public Service Commission of the District of Columbia (the “Commission”), acting in accordance with the Act, has issued an order [insert date to order] (the “Financing Order”), which, among other things, approves (i) the assessment of the DDOT Improvement Charge, in the form of a surcharge imposed on certain classes of Pepco’s District of Columbia electric distribution customers, (ii) the creation of the DDOT Improvement Property, and (iii) the execution by Pepco of this Agreement; and

WHEREAS, the Issuer and the Servicing Agent wish to establish the terms and conditions pursuant to which the Servicing Agent shall, in accordance with the provisions of the Act and the Financing Order, act as the agent for the Issuer in the billing and collection of the DDOT Improvement Charge by setting forth in this Agreement the respective functions, obligations, responsibilities and rights of the Issuer and the Servicing Agent.

NOW, THEREFORE, in consideration of these premises and the mutual covenants herein contained, the parties hereto agree as follows:

ARTICLE I

DEFINITIONS

Section 1.01 Definitions.

- (a) Unless otherwise defined herein, capitalized terms used herein shall have the meanings ascribed to them in Annex I.
- (b) All terms defined in this Agreement shall have the defined meanings when used in any certificate, opinion, notice or other document made or delivered pursuant hereto unless otherwise defined therein.
- (c) When used in this Agreement (i) the words “hereof,” “herein,” “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement, (ii) Section, Schedule, Exhibit and Annex are references to Sections, Schedules, Exhibits and Annexes in or to this Agreement, unless otherwise specified and (iii) the term “including” shall mean “including without limitation.”
- (d) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms.

ARTICLE II

APPOINTMENT AND AUTHORIZATION

Section 2.01 Appointment of Servicing Agent and Acceptance of Appointment.

The Issuer hereby appoints the Servicing Agent as the Issuer’s agent, and the Servicing Agent hereby accepts such appointment, solely to perform the obligations set forth in this Agreement on behalf of and for the benefit of the Issuer as the principal in accordance with the terms of the Act, the Financing Order, this Agreement and applicable Law. This appointment and the Servicing Agent’s acceptance thereof may not be revoked by the Issuer or the Servicing Agent except in accordance with the express terms of this Agreement.

Section 2.02 Authorization.

- (a) The Servicing Agent is hereby authorized and empowered by the Issuer with respect to all or any portion of the DDOT Improvement Property, (a) to execute and deliver on behalf of the Issuer any and all instruments, documents and notices and (b) to make any and all filings and participate in any and all proceedings of any kind with any Governmental Authority, including the Commission, in either case, as necessary or appropriate to carry out the Servicing Agent’s responsibilities under the Act, the Financing Order, this Agreement and as otherwise required by applicable Law.
- (b) The Issuer shall from time to time, upon the request of the Servicing Agent, execute and deliver to the Servicing Agent such written authorizations, written instructions or

other documents, which may include one or more powers of attorney, as the Servicing Agent shall determine to be necessary or appropriate (i) to enable the Servicing Agent to carry out the Servicing Agent's responsibilities under the Act, the Financing Order and this Agreement or (ii) to confirm the power or authority of the Servicing Agent under this Agreement.

Section 2.03 Ownership of the DDOT Improvement Property and DDOT Improvement Revenue. Notwithstanding any other provision of this Agreement, the Issuer and the Servicing Agent acknowledge and agree that in accordance with the Act (i) the DDOT Improvement Property is a property right of the Issuer over which the Issuer has sole dominion and control, subject to the terms of the Indenture, and (ii) the DDOT Improvement Revenue is the revenue of the Issuer. The Servicing Agent agrees that it shall not take any action not authorized by this Agreement or not consistent with its customary procedures and practices incident to its business as an electric company that would impair the rights of the Issuer in the DDOT Improvement Property and the DDOT Improvement Revenue, except to the extent such action is required by the Act, the Financing Order or by applicable Law.

Section 2.04 No Restriction On the Business of the Servicing Agent as an Electric Company. The Servicing Agent is providing its services under this Agreement incident to its business as an electric company and as a convenience to Issuer in accordance with the Act and the Financing Order. Nothing in this Agreement shall be deemed to restrict in any way the right and ability of the Servicing Agent to conduct its business as an electric company in accordance with its authority under applicable Law and its Tariffs.

Section 2.05 Bonds Not Obligations of the Servicing Agent. The Bonds are solely the special obligations of the Issuer pursuant to the Act. Notwithstanding any other provision of this Agreement, the Servicing Agent shall not be obligated to take any action or execute any document that would have the effect of causing the Bonds to be treated as indebtedness of the Servicing Agent (i) for financial reporting purposes under GAAP, (ii) for regulatory purposes under any applicable Law or by any federal or state regulatory commission or agency, or (iii) by any nationally recognized statistical rating organization. Without limiting the generality of the foregoing, in no circumstances shall the Bonds be payable from, nor shall the Issuer or the holders of the Bonds (or the Indenture Trustee acting for the holders of the Bonds) have claim to, any revenue, income, assets or funds of the Servicing Agent, and in no event shall the Servicing Agent have any obligation to remit to the Issuer any funds in excess of actual amounts collected by the Servicing Agent from its customers made in payment of the DDOT Improvement Charge, nor shall Issuer or the holders of the Bonds (or the Indenture Trustee acting for the holders of the Bonds) have any claim or right to any other fee, tax, charge or payment of any kind billed, imposed or collected by the Servicing Agent in its capacity as an electric company.

ARTICLE III

ROLE OF SERVICING AGENT

Section 3.01 Duties of Servicing Agent.

(a) The Servicing Agent, as agent for the Issuer, shall have the following duties and responsibilities:

(i) calculation and billing of the DDOT Improvement Charge in accordance with the terms of the Financing Order;

(ii) collecting, posting and processing DDOT Improvement Charge receipts and the periodic remittance thereof to the Indenture Trustee through deposit in the Collection Account (or any other fund or account designated by the Issuer);

(iii) responding to inquiries by customers, the Commission or the Issuer with respect to the DDOT Improvement Charge;

(iv) investigating and handling customer payment delinquencies, including the negotiation and settlement thereof or the sale of defaulted or written off accounts that include the DDOT Improvement Charge, all in accordance with Servicing Agent Policies and Practices (and furnishing to the Issuer such reports with respect thereto as the Issuer may from time to time request);

(v) making such filings with the Commission with respect to the imposition and collection of the DDOT Improvement Charge as are required by this Agreement, as the Issuer may direct or as the Commission may require in the Financing Order or otherwise;

(vi) after notification by the Issuer of the Periodic Payment Requirement for the next Calculation Period, as designee of the Issuer, prepare the True-Up Request as more fully described in Section 4.02; and

(vii) performing such other duties to be performed by the Servicing Agent as may be specified by the Financing Order and agreed to by the Servicing Agent and the Issuer.

(b) Without limiting the generality of Section 3.01(a), the Servicing Agent shall comply with the duties and responsibilities relating to data acquisition, usage and bill calculation, billing, customer service functions, collections, payment processing and remittance with respect to the DDOT Improvement Charge as are set forth in Annex II (as it may be amended from time to time).

(c) Anything in this Agreement to the contrary notwithstanding, the duties of the Servicing Agent set forth in this Agreement shall be qualified in their entirety by the Act, the Financing Order and applicable Law.

Section 3.02 Billing and Collection of DDOT Improvement Charges.

(a) The Servicing Agent shall use reasonable efforts consistent with the Servicing Agent Policies and Practices to bill and collect the DDOT Improvement Charge on behalf of the Issuer following the same billing and collection procedures that the Servicing Agent follows with respect to billing and collections for its own electric company business and for the account of others, as more fully described in Annex II.

(b) The Issuer shall not directly or indirectly take any action to collect the DDOT Improvement Charge from the Servicing Agent's customers, including the initiation of any communication with the Servicing Agent's customers with regard to delinquencies or the commencement of legal or collection proceedings.

Section 3.03 Reporting and Notification Requirements.

(a) Monthly Servicing Agent's Certificate. On or before the ___ day of each calendar month (or if such day is not a Servicing Agent Business Day, on the immediately following Servicing Agent Business Day), the Servicing Agent shall prepare and deliver to the Issuer a written report substantially in the form of Exhibit A hereto (a "Monthly Servicing Agent's Certificate") setting forth the information specified therein relating to DDOT Improvement Charge Payments collected by the Servicing Agent during the immediately preceding Collection Period.

(b) Semi-Annual Servicing Agent's Certificate. Not later than five Servicing Agent Business Days prior to each Payment Date, the Servicing Agent shall deliver to the Issuer a written report substantially in the form of Exhibit B hereto (the "Semi-Annual Servicing Agent's Certificate") setting forth the information specified therein.

(c) Other Information. Upon the reasonable request of the Issuer, the Servicing Agent shall, to the extent permitted by Law, provide to the Issuer within a reasonable time after the Issuer's written request therefor:

(i) any public financial information pertaining to the Servicing Agent, and any information relating to the billing, collection, processing and remittance of the DDOT Improvement Charge within the knowledge or possession of the Servicing Agent, as in either case may be reasonably necessary to enable the Issuer to monitor the performance by the Servicing Agent of its obligations under this Agreement; and

(ii) any information available to the Servicing Agent or reasonably obtainable by the Servicing Agent, that is necessary (a) to enable the Issuer to calculate, or verify the calculation of, the DDOT Improvement Charge for each DDOT Improvement Charge Rate Class and (b) to assist the Issuer to

satisfy its obligations relating to the periodic reporting requirements under 17 CFR 240.15c2-12.

Section 3.04 Servicing Standards. In performing its servicing obligations under this Agreement, the Servicing Agent shall:

(a) use the same degree of care and diligence that the Servicing Agent exercises with respect to billing and collection activities that the Servicing Agent conducts for its own electric company business and the account of others;

(b) follow standards, policies and procedures in performing its duties as Servicing Agent that are customary in the Servicing Agent's industry;

(c) comply with all requirements of Law and the Financing Order applicable to the Servicing Agent relating to the billing and collection of the DDOT Improvement Charge on behalf of the Issuer;

(d) file all Commission notices that the Servicing Agent is required to file under the Act, the Financing Order, and this Agreement; and

(e) maintain its financial books and records consistent with the recognition that the DDOT Improvement Revenue is not the property of Pepco to the extent permitted by GAAP.

Section 3.05 Remittances.

(a) As soon as reasonably practicable, but in no event later than the third Servicing Agent Business Day after receipt, the Servicing Agent shall remit to the Collection Account the DDOT Improvement Charge Payments collected by the Servicing Agent from customers in respect of billed DDOT Improvement Charges. Such remittances shall be made on each Servicing Agent Business Day (the "Daily Remittance"). Simultaneously with each Daily Remittance, the Servicing Agent shall provide written notice to the Issuer of such remittance (including the exact dollar amount remitted).

(b) The Servicing Agent agrees and acknowledges that upon receipt and prior to remittance, the Servicing Agent shall hold all DDOT Improvement Charge Payments collected by it for the benefit of the Issuer and that all such amounts will be remitted by the Servicing Agent in accordance with this Section 3.05 without any charge, surcharge, fee, offset or other deduction, except for the offset permitted by Section 5.05 of this Agreement.

(c) The Issuer acknowledges that under the terms of the Financing Order no part of any interest or of any late fee or other charge collected by the Servicing Agent from any customer in respect of any delinquent account (including a delinquency arising by reason of the non-payment by a customer of the DDOT Improvement Charge) shall be deemed a part of the DDOT Improvement Charge and need not be remitted by the Servicing Agent to the Issuer pursuant to this Section 3.05. Such amounts shall be retained by the Servicing Agent as additional compensation.

(d) If, on any Servicing Agent Business Day, the Servicing Agent fails to remit to the Collection Account the Daily Remittance due on that day, then the Servicing Agent shall pay to the Collection Account interest on the overdue Daily Remittance accrued at the Federal Funds Rate from the Servicing Agent Business Day on which such Daily Remittance was required to be made to the date that such Daily Remittance is made. Any Daily Remittance made on a day other than the date on which it was initially required to be made shall be identified as a transfer separate from the Daily Remittance required for such date.

ARTICLE IV

TRUE-UP ADJUSTMENTS

Section 4.01 Issuance Advice Letter. If the Issuance Advice Letter filed by the Issuer with the Commission following the issuance of the Bonds indicates that the projected annual DDOT Improvement Revenue differs from the DDOT Underground Electric Company Infrastructure Improvement Annual Revenue Requirement (as defined by the Act), the Servicing Agent, as designee of the Issuer, shall adjust the DDOT Improvement Charge to conform with the Issuance Advice Letter in accordance with the Financing Order and as contemplated by Section 303(d) of the Act.

Section 4.02 Semi-Annual or Quarterly True-Up Adjustment.

(a) On or before March 1 and September 1 of each year, beginning not sooner than 6 months and not later than 12 months after the issuance of the Bonds and continuing for so long as the Bonds are outstanding, the Servicing Agent shall file semi-annually with the Commission a True-Up Request which includes a request for approval of a schedule applying a true-up mechanism to the DDOT Improvement Charge as contemplated by Section 314 of the Act and the Financing Order; provided, however, following the expected maturity date of the last maturing series or tranche of the Bonds, if any Bonds remain outstanding after such expected maturity date, the Servicing Agent will be required to file a quarterly True-Up Request with the Commission. The True-Up Request shall be prepared with the cooperation of the Issuer in accordance with the true-up adjustment mechanism and mathematical formula set forth in Annex III.

(b) In connection with the preparation of the True-Up Request for a mandatory semi-annual or quarterly true-up adjustment:

(i) The Issuer shall prepare and provide to the Servicing Agent, or cause the Indenture Trustee to provide to the Servicing Agent, at least thirty days prior to each True-Up Request filing date:

(A) The amount on deposit in the Collection Account, as of the most recent date practicable.

(B) A schedule showing the Periodic Payment Requirement for the next Calculation Period based on: (1) the projected debt service on the Bonds (amounts due and amounts to be accrued); (2) any replenishment required to be made to any reserve account and (3) the timely payment of all other Ongoing Financing Costs during such Calculation Period.

(C) Updated information regarding the amounts referred to in clauses (A) and (B) as the Servicing Agent shall reasonably request.

(ii) The Servicing Agent shall subtract (A) the sum of amounts provided for in subsection (i)(A) above and amounts expected to be collected and remitted following the Calculation Date based on the DDOT Improvement Charge then in effect from (B) the Periodic Payment Requirement for the next Calculation Period as provided by the Issuer in subsection (i)(B) above (the result being the "Net Revenue Requirement" for the next Calculation Period).

(iii) The Servicing Agent shall prepare and provide to the Issuer an update of the electric company customer data and assumptions underlying the calculation of the DDOT Improvement Charge, including projected number of customers subject to the DDOT Improvement Charge by rate class, electricity usage and expected delinquencies and write-offs during the next Calculation Period, along with the information and data required by Section 314(b) of the Act and any other pertinent information that the Issuer shall reasonably request to the extent such information is in the possession of, or can reasonable be obtained by, the Servicing Agent.

(iv) The Servicing Agent shall determine the DDOT Improvement Charge to be allocated to each DDOT Improvement Charge Rate Class during the next Calculation Period utilizing the adjustment mechanism and mathematical formula contained in Annex III to this Agreement.

(c) The Servicing Agent shall take all reasonable actions and make all reasonable efforts to effectuate the rate changes provided for in the True-Up Request, including (i) the publication of any required public notices, (ii) responding to Commission questions and providing to the Commission such supplemental data or information within its possession as the Commission may request and (iii) participating in any hearing held by the Commission pertaining to the True-Up Request, and the Issuer shall provide such cooperation, assistance and information in connection therewith as the Servicing Agent may reasonably request.

Section 4.03 Non-Periodic True-Up Adjustments. If the Issuer at any time determines that DDOT Improvement Revenue is insufficient to satisfy the Periodic Payment Requirement and that it would be imprudent to defer an adjustment to the DDOT Improvement Charge until the next semi-annual or quarterly True-Up Request, as applicable, is filed, the Issuer and the Servicing Agent, if required or permitted by the Financing Order, will cooperate such that the Servicing Agent shall file with the Commission a True-Up Request seeking an interim adjustment to the DDOT Improvement Charge. The interim True-Up Request shall contain or be accompanied by such information and data as shall be set forth in Section 314 (b) of the Act and as otherwise may be specified in the Financing Order. In order to facilitate the assessment by the Issuer of the need to file a non-periodic True-Up Request, following the occurrence of an event of force majeure (including fire, flood, earthquake, storm, hurricane or other natural disaster, war, act of foreign enemies, terrorism, labor dispute, strike, or lockout) that the Servicing Agent reasonably expects may result in the DDOT Improvement Revenue to be insufficient to satisfy the Periodic Payment Requirement, the Servicing Agent shall provide prompt written notice of

such expectation to the Issuer. The Servicing Agent's failure to provide notice of an event of force majeure shall not be a default under this Agreement.

Section 4.04 Notification to Issuer of True-Up Filings. Whenever the Servicing Agent makes a filing with the Commission under Section 4.02 or Section 4.03, the Servicing Agent shall deliver to the Issuer and to the Indenture Trustee, on behalf of the Issuer, (i) concurrently with the filing thereof, a copy of such filing (together with a copy of all ancillary notices and documents which, in the Servicing Agent's reasonable judgment, are material to the filing) and any subsequent filings or submission relating thereto and (ii) as soon as practicable after the receipt thereof from the Commission, a copy of all Commission communications to the Servicing Agent relating to such filing.

Section 4.05 Disclosure to Customers.

(a) The Servicing Agent shall notify affected customers of any change in the DDOT Improvement Charge pursuant to a True-Up Request to the extent and in the manner and timeframe required by the Financing Order or Commission Regulations.

(b) The Servicing Agent shall comply with the requirements of the Financing Order with respect to the application of the DDOT Improvement Charge to each DDOT Improvement Charge Rate Class so as to ensure that the DDOT Improvement Charge is separate and apart from the Servicing Agent's other charges imposed or collected in its capacity as electric company.

ARTICLE V

THE SERVICING AGENT

Section 5.01 Representations and Warranties Servicing Agent. The Servicing Agent makes the following representations and warranties as of the Closing Date on which the Issuer has relied in entering into this Agreement. These representations and warranties shall survive the execution and delivery of this Agreement.

(a) **Organization and Good Standing.** The Servicing Agent is duly incorporated, validly existing and in good standing under the laws of the District of Columbia, and has the corporate power and authority to own the properties that it currently owns, to conduct the business that it currently conducts and to execute, deliver and carry out the terms of this Agreement, including the servicing of the DDOT Improvement Charge in accordance with the terms of this Agreement and the Financing Order.

(b) **Due Qualification.** The Servicing Agent is duly qualified to do business and is in good standing, and has obtained all necessary licenses and approvals, in all jurisdictions in which the ownership or lease of property or the conduct of its business (including the servicing of the DDOT Improvement Charge as required by this Agreement and the Financing Order) requires such qualifications, licenses or approvals, except where the failure to so qualify or to obtain such licensing and approvals would not be reasonably likely to have a material adverse effect on the Servicing Agent's business, operations, assets, revenues or properties or on

its ability to service the DDOT Improvement Charge in accordance with the terms of this Agreement.

(c) Due Authorization. The execution, delivery and performance of this Agreement by the Servicing Agent have been duly authorized by all necessary corporate action on the part of the Servicing Agent.

(d) Binding Obligation. This Agreement constitutes a legal, valid and binding obligation of the Servicing Agent enforceable against the Servicing Agent in accordance with its terms, subject to insolvency, reorganization, moratorium, fraudulent transfer and other Laws relating to or affecting creditors' rights generally from time to time in effect and to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(e) No Violation. The consummation of the transactions contemplated by this Agreement and the fulfillment of the terms of this Agreement by the Servicing Agent will not (i) conflict with, result in any breach of any of the terms and provisions of or constitute (with or without notice or lapse of time) a default under the organizational documents of the Servicing Agent, or in any material respect any indenture or other agreement or instrument to which the Servicing Agent is a party or by which it or any of its property is bound, (ii) result in the creation or imposition of any material Lien upon any of the properties of the Servicing Agent pursuant to the terms of any such indenture, agreement or other instrument or (iii) violate any existing Law or any existing order, rule or regulation applicable to the Servicing Agent of any Governmental Authority having jurisdiction over the Servicing Agent or its properties.

(f) No Proceedings. There are no proceedings pending, and to the Servicing Agent's knowledge there are no proceedings threatened or investigations pending or threatened, before any Governmental Authority having jurisdiction over the Servicing Agent (i) asserting the invalidity of this Agreement, (ii) seeking to prevent the consummation of any of the transactions contemplated by this Agreement or (iii) seeking any determination or ruling that could reasonably be expected to materially and adversely affect the performance by the Servicing Agent of its obligations under, or the validity or enforceability of, this Agreement.

(g) Approvals. No approval, authorization, consent, order or other action of, or filing with, any Governmental Authority is required in connection with the execution and delivery by the Servicing Agent of this Agreement, the performance by the Servicing Agent of the transactions contemplated by this Agreement or the fulfillment by the Servicing Agent of the terms of this Agreement, except for those that have been obtained or those that the Servicing Agent is required to obtain or make in the future in accordance with the terms of this Agreement.

Section 5.02 Limitation on the Liability of Servicing Agent and Others.

(a) The Servicing Agent may incur liability under this Agreement only in respect of the obligations specifically undertaken by the Servicing Agent under this Agreement.

(b) Notwithstanding paragraph (a), none of the Servicing Agent, any of its subsidiaries or affiliates or any of its or their directors, officers, employees or agents (other than the Servicing Agent, a "Covered Person") shall be liable to the Issuer or any other Person, including the Indenture Trustee and the holders of the Bonds, for any action taken, or for

refraining from the taking of any action, pursuant to this Agreement or for errors in judgment in connection with the fulfillment by the Servicing Agent of its obligations under this Agreement; provided, however, that this provision shall not protect the Servicing Agent or a Covered Person against any liability arising out of the willful misconduct, bad faith or gross negligence of the Servicing Agent or a Covered Person in the performance by the Servicing Agent of its obligations under this Agreement or by reason of the Servicing Agent's or a Covered Person's reckless disregard of the Servicing Agent's obligations and duties under this Agreement. The Servicing Agent and any Covered Person may rely in good faith on the advice of counsel or on any document of any kind prima facie properly executed and submitted by any Person respecting any matters arising under this Agreement.

(c) Without limiting the generality of paragraph (b), the Issuer and the Servicing Agent expressly acknowledge and agree that:

(i) In connection with the filing of any True-Up Request and the implementation of any adjustment to the DDOT Improvement Charge as a result thereof, the Servicing Agent is acting solely in its capacity as the agent of Issuer under this Agreement.

(ii) The Servicing Agent shall not be responsible in any manner for, and shall have no liability whatsoever as a result of, any action, decision, ruling or other determination made by the Issuer or the Commission or any failure to act or delay by either of them (other than any delay resulting from the Servicing Agent's failure in any material respect to make any filings the Servicing Agent is required to make under Section 4.02 or Section 4.03 in a timely and correct manner or any breach by the Servicing Agent of its duties under this Agreement that adversely affects in a material respect the DDOT Improvement Charge or a True-Up Request) in any way related to the DDOT Improvement Property.

(iii) The Servicing Agent shall have no liability whatsoever relating to the calculation of the DDOT Improvement Charge or any adjustments thereto, including as a result of any inaccuracy of any of the assumptions made in connection with such calculations regarding the projected electricity usage of its customers or expected delinquencies and write-offs, so long as the Servicing Agent has acted in good faith and not in a grossly negligent manner in connection therewith.

Section 5.03 Indemnification.

(a) The Servicing Agent shall indemnify, defend and hold harmless the Issuer and its officers, employees and agents (each, an "Indemnified Person"), from and against any and all losses, claims, damages and liabilities to which any of them may become subject, and shall reimburse the Issuer and each such Indemnified Person for all reasonable expenses (including reasonable attorney's fees and expenses) as and when incurred by any of them in connection with investigating any such losses, claims, damages and liabilities or in connection with defending any such actions, insofar as such losses, claims, damages, liabilities, expenses or actions arise out of or are based upon the performance by the Servicing Agent of this Agreement to the extent that such losses, claims, damages, liabilities, expenses or actions arise out of or are based upon the willful misconduct, bad faith or gross negligence of the Servicing Agent in the

performance of, or the Servicing Agent's reckless disregard of its obligations and duties under, this Agreement.

(b) Promptly after receipt by an Indemnified Person of notice of the commencement of any action, proceeding or investigation, such Indemnified Person shall, if a claim in respect thereof is to be made against the Servicing Agent under this Section 5.03, notify the Servicing Agent in writing of the commencement thereof. Failure by an Indemnified Person to so notify the Servicing Agent shall relieve the Servicing Agent from the obligation to indemnify and hold harmless such Indemnified Person under this Section 5.03 only to the extent that the Servicing Agent suffers actual prejudice as a result of such failure. With respect to any action, proceeding or investigation brought by a third party for which indemnification may be sought under this Section 5.03, the Servicing Agent shall be entitled to elect to conduct and control, at its expense and with counsel of its choosing that is reasonably satisfactory to the Indemnified Persons, the defense of any such action, proceeding or investigation (in which case the Servicing Agent shall not, upon notification given to the Indemnified Person of such election, thereafter be responsible for the fees and expenses of any separate counsel retained by any Indemnified Person, except as set forth below); provided that any Indemnified Person shall have the right to participate in such action, proceeding or investigation through counsel chosen by it and at its own expense. Notwithstanding the Servicing Agent's election to assume the defense of any action, proceeding or investigation, an Indemnified Person shall have the right to employ separate counsel (including local counsel), and the Servicing Agent shall bear the reasonable fees, costs and expenses of such separate counsel if (i) the defendants in any such action include both the Indemnified Person and the Servicing Agent and the Indemnified Person shall have reasonably concluded that there may be legal defenses available to it that are different from or additional to those available to the Servicing Agent, (ii) the Servicing Agent shall not have employed counsel reasonably satisfactory to the Indemnified Person to represent the Indemnified Person within a reasonable time after notice of the institution of such action or (iii) the Servicing Agent shall authorize the Indemnified Person to employ separate counsel at the expense of the Servicing Agent. The Servicing Agent shall not be bound by any settlement entered into without its consent.

(c) The provisions of this Section 5.03 shall survive any repeal, amendment or judicial invalidation of the Act or any revocation, amendment or modification of the Financing Order and shall survive the termination of this Agreement.

Section 5.04 Resignation of Servicing Agent. The Servicing Agent shall not resign from the obligations and duties hereby imposed on it as Servicing Agent under this Agreement unless it delivers to the Commission an opinion of counsel (who may be an employee of the Servicing Agent) to the effect that Pepco's performance of its duties under this Agreement shall no longer be permissible under applicable Law. No such resignation shall become effective until a Successor Servicing Agent shall have assumed the responsibilities and obligations of Pepco in accordance with Section 6.03.

Section 5.05 Servicing Agent Compensation. In consideration for its services hereunder, for so long as it continues to provide services under this Agreement, the Issuer shall pay to the Servicing Agent as part of the Issuer's on-going financing costs an annual fee (the "Servicing Fee") in an amount equal to 0.075% of the initial aggregate par amount of the Bonds

(without giving effect to any subsequent reduction in the outstanding principal amount of the Bonds). The Servicing Fee owing shall be paid semi-annually in arrears, with half of the Servicing Fee due for each year being paid on each Payment Date. The Servicing Fee shall be paid to the Servicing Agent by the Indenture Trustee on behalf of the Issuer by wire transfer of immediately available funds to an account designated by the Servicing Agent. If the Servicing Fee is not paid when due, the Servicing Agent shall be entitled, upon 30 day's prior written notice to the Issuer, to offset the amount due against the Daily Remittance until the amount due is paid in full.

Section 5.06 Maintenance of and Access to DDOT Improvement Property Records.

(a) The Servicing Agent shall maintain the DDOT Improvement Property Records in accordance with its standard accounting practices and procedures and in sufficient detail to permit the reconciliation of DDOT Improvement Charge Payments received by the Servicing Agent with the DDOT Improvement Charge remittances deposited to the Collection Account.

(b) The Servicing Agent shall permit the Issuer and the Indenture Trustee and their agents at any time during normal business hours, upon reasonable notice to the Servicing Agent and to the extent it does not unreasonably interfere with the Servicing Agent's normal operations, to inspect, audit and make copies of and abstracts from the DDOT Improvement Property Records; provided, however, that nothing in this Section 5.06 shall affect the obligation of the Servicing Agent to observe any applicable Law prohibiting disclosure of information regarding its electric distribution customers, and the failure of the Servicing Agent to provide access to such information as a result of any such obligation shall not constitute a breach of this Section 5.06.

ARTICLE VI

DEFAULT

Section 6.01 Servicing Agent Default. If any one or more of the following events (a "Servicing Agent Default") shall occur and be continuing:

(a) any failure by the Servicing Agent to remit to the Collection Account on behalf of the Issuer any required remittance of the DDOT Improvement Charge that continues unremedied for a period of five Servicing Agent Business Days after written notice of such failure has been delivered to the Servicing Agent by the Issuer or the Indenture Trustee; or

(b) any failure on the part of the Servicing Agent duly to observe or to perform in any material respect any covenant or agreement of the Servicing Agent set forth in this Agreement, if such failure (i) materially and adversely affects the rights of the holders of the Bonds and (ii) continues unremedied for a period of 60 days after the date on which written notice of such failure has been delivered to the Servicing Agent by the Issuer or by the Indenture Trustee; or

(c) any representation or warranty made by the Servicing Agent in this Agreement shall prove to have been incorrect in a material respect when made, the consequence of which is a material adverse effect on the Issuer or the holders of the Bonds and such material adverse effect continues unremedied for a period of 60 days after the date on which written notice thereof has been delivered to the Servicing Agent by the Issuer or the Indenture Trustee;

(d) an Insolvency Event occurs with respect to the Servicing Agent; or

(e) a failure by the Servicing Agent to file a True-up Request required under this Agreement for a period of 5 days after the date on which written notice of such failure has been delivered to the Servicing Agent by the Issuer or by the Indenture Trustee;

then, so long as the Servicing Agent Default shall not have been remedied within the allotted time, the Issuer, by notice given in writing to the Servicing Agent may elect to terminate all the rights and obligations of the Servicing Agent under this Agreement (other than the obligation under Section 6.03 to continue performing its functions as Servicing Agent until a Successor Servicing Agent is appointed). In addition, upon a Servicing Agent Default, the Issuer shall be entitled to apply to the Commission for sequestration of the DDOT Improvement Revenues.

Section 6.02 Notice of Servicing Agent Default. The Servicing Agent shall deliver to the Issuer, promptly after a Responsible Officer of the Servicing Agent acquires actual knowledge thereof, but in no event later than five Servicing Agent Business Days thereafter, written notice of any event which upon the giving of notice or lapse of time, or both, would become a Servicing Agent Default.

Section 6.03 Appointment of a Successor Servicing Agent.

(a) In the event of the termination of the Servicing Agent pursuant to Section 6.01 or the resignation of the Servicing Agent pursuant to Section 5.04, the Issuer shall appoint a Successor Servicing Agent. The Servicing Agent shall continue to perform its functions as Servicing Agent under this Agreement, and shall be entitled to receive the Servicing Fee, until the appointment of a Successor Servicing Agent.

(b) Upon the appointment of the Successor Servicing Agent, all authority and power of the Servicing Agent under this Agreement shall, without further action, pass to and be vested in the Successor Servicing Agent and, without limitation, the Issuer is hereby authorized and empowered to execute and deliver, on behalf of the Servicing Agent, as attorney-in-fact or otherwise, any and all documents and other instruments, and to do or accomplish all other acts or things necessary or appropriate, to effect the succession.

(c) The Servicing Agent shall cooperate with the Successor Servicing Agent and the Issuer in effecting the transfer of the duties and responsibilities of the Servicing Agent under this Agreement to the Successor Servicing Agent, including the transfer to the Successor Servicing Agent of the DDOT Improvement Property Records and all cash amounts, if any, that shall at the time be held by the Servicing Agent in its capacity as the Servicing Agent.

(d) If the appointment of a Successor Servicing Agent is the result of a Servicing Agent Default, all reasonable costs and expenses (including reasonable attorney's fees

and expenses) incurred in connection with transferring the DDOT Improvement Property Records to the Successor Servicing Agent shall be paid by the Servicing Agent upon presentation of reasonable documentation of such costs and expenses. In all other cases, the costs and expenses of effecting the transfer of the duties and responsibilities of the Servicing Agent to the Successor Servicing Agent shall be borne by the Issuer as part of the Issuer's on-going financing costs.

(e) In no event shall the Issuer, an Indemnified Person, or any other Person, have recourse against the assets of Pepco, whether as a result of a breach or default under this Agreement, a claim for indemnification pursuant to Section 5.03, or otherwise as a result of the acts or omissions of Pepco as the Servicing Agent.

ARTICLE VII

MISCELLANEOUS PROVISIONS

Section 7.01 Amendments and Waivers. This Agreement may only be amended, modified, altered or supplemented in a writing signed by the Servicing Agent and the Issuer. No obligation under this Agreement shall be waived or discharged unless such waiver or discharge is signed by the party granting such waiver or discharge. Except where this Agreement establishes an express deadline, no failure on the part of either party to exercise any right under this Agreement, and no delay on the part of either party in exercising any right under this Agreement, shall operate as a waiver of such right.

Section 7.02 Notices. Unless otherwise specifically provided herein, all demands, notices and communications upon or to the Servicing Agent, the Issuer or the Indenture Trustee under this Agreement shall be sufficiently given for all purposes hereunder if in writing and (i) delivered personally, (ii) sent by documented delivery service or (iii) to the extent receipt is confirmed telephonically, sent by facsimile transmission or other form of electronic transmission as indicated below (or to such other address, telephone number, facsimile transmission number or electronic mail address as any party shall specify by notice to the other parties given in accordance with this Section 7.02):

(a) In the case of the Servicing Agent,

Potomac Electric Power Company
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
Email Address: _____

(b) In the case of the Issuer, to

The District of Columbia
[Office]
[Address]
Attention: _____

Telephone: _____
Facsimile: _____
Email Address: _____

(c) In the case of the Indenture Trustee, to:

[Name]
[Address]
Attention: _____
Telephone: _____
Facsimile: _____
Email Address: _____

Section 7.03 Successors and Assigns. Unless terminated by mutual agreement of the Issuer and the Servicing Agent, this Agreement shall remain in full force and effect for so long as there are any Bonds outstanding and until all of the respective obligations of the parties hereto are discharged in full and shall be binding upon the Servicing Agent or any other entity that may in the future acquire all or substantially all of Pepco's electric distribution operations in the District of Columbia, whether by purchase, merger, consolidation or otherwise. Neither party may assign any of its rights or obligations under this Agreement without the prior consent of the other party, except the Issuer may assign its rights to the Indenture Trustee as required by the Indenture.

Section 7.04 Limitations on Rights of Others. The provisions of this Agreement are solely for the benefit of the Servicing Agent and the Issuer. Nothing in this Agreement, whether express or implied, shall be construed to give to any other Person any legal or equitable right, remedy or claim under or in respect of this Agreement or any covenants, conditions or provisions contained herein.

Section 7.05 Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remainder of such provision (if any) or the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 7.06 Separate Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 7.07 Headings. The headings of the various Articles and Sections herein are for convenience of reference only and shall not define or limit any of the terms or provisions hereof.

Section 7.08 GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE DISTRICT OF COLUMBIA, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS, AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

Section 7.09 Assignment to Indenture Trustee. The Servicing Agent hereby acknowledges and consents to any pledge, assignment and grant of a security interest by the Issuer to the Indenture Trustee pursuant to the Indenture of any or all of the Issuer's rights hereunder.

Section 7.10 Other Matters. In accordance with Section 205(e) of the Act, the District of Columbia Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law § 18-723; D.C. Official Code § 2-351.01 et seq.) and subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to this Agreement.

[Signature page follows]

IN WITNESS WHEREOF, this Agreement has been duly executed and delivered by the duly authorized officer of each party hereto as of the date first above written.

DISTRICT OF COLUMBIA, as Issuer

By: _____

Name:

Title:

POTOMAC ELECTRIC POWER COMPANY,
as Servicing Agent

By: _____

Name:

Title:

Monthly Servicing Agent's Certificate

(Delivered pursuant to Section 3.03(a) of the Servicing Agreement)

Potomac Electric Power Company, as servicing agent (the "Servicing Agent") under the DDOT Property Servicing Agreement dated as of [closing date] between the Servicing Agent and the District of Columbia, does hereby certify as follows:

Collection Period:

Remittance Dates:

Rate Class	DDOT Improvement Charge of Class	Aggregate DDOT Improvement Charges Billed	Aggregate DDOT Improvement Charge Payments Received
Total			

Capitalized terms used herein have their respective meanings set forth in the Servicing Agreement.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Monthly Servicing Agent's Certificate this ___ day of _____.

POTOMAC ELECTRIC POWER COMPANY,
as Servicing Agent

By: _____
Name:
Title:

Form of Semi-Annual Servicing Agent's Certificate

(Delivered pursuant to Section 3.03(b) of the Servicing Agreement)

Potomac Electric Power Company, as servicing agent (the "Servicing Agent") under the DDOT Property Servicing Agreement dated as of [closing date] between the Servicing Agent and the District of Columbia, does hereby certify that, for the Collection Periods indicated, Remittances were as stated below:

Collection Periods: _____ to _____

Payment Date: _____

Remittances for the	Collection Period	\$ _____
Remittances for the	Collection Period	\$ _____
Remittances for the	Collection Period	\$ _____
Remittances for the	Collection Period	\$ _____
Remittances for the	Collection Period	\$ _____
Remittances for the	Collection Period	\$ _____

Total: \$ _____

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Semi-Annual Servicing Agent's Certificate this ___ day of _____.

POTOMAC ELECTRIC POWER COMPANY,
as Servicing Agent

By: _____
Name:
Title:

ANNEX I

DEFINITIONS

As used in this Agreement, the following defined terms shall have the meanings indicated below:

“Act” has the meaning ascribed to such term in the preamble.

“Added Value Services” means [to be supplied].

“Adjustment Date” means the date on which a True-Up Request is filed with the Commission.

“Agreement” has the meaning ascribed to such term in the introductory paragraph.

“Annual Revenue Requirement” has the meaning ascribed to such term in the Act.

“Billing Period” means the monthly or other period for which the Servicing Agent renders a bill to a Customer.

“Bonds” has the meaning ascribed to such term in the preamble.

“Class Allocation Factor” means, with respect to each True-Up Request, the cost allocation factors for each Class used in Pepco’s most recently approved electric company distribution service base rate case.

“Closing Date” has the meaning ascribed to such term in the Indenture.

“Calculation Period” means the six month period beginning on March 1 and September 1 of each year or other period for which a true-up adjustment is calculated in a True-Up Request.

“Collection Account” means the designated account or accounts established by the Indenture and held by the Indenture Trustee for the deposit of the DDOT Improvement Revenue collected by the Servicing Agent pursuant to this Agreement.

“Collection Period” means the period of one month ending on the __ day of each month.

“Commission” has the meaning ascribed to such term in the preamble.

“Commission Regulations” means the Commission rules, regulations, policies and procedures in effect from time to time that are applicable to the activities of the Servicing Agent as an electric company and in its capacity as the Servicing Agent.

“Covered Customer” means an electric distribution customer in the District of Columbia to which a DDOT Improvement Charge applies.

“Covered Person” has the meaning ascribed to such term in Section 5.02(b).

“Daily Remittance” has the meaning ascribed to such term in Section 3.05(a).

“DDOT Improvement Charge” has the meaning ascribed to such term in the preamble.

“DDOT Improvement Charge Payments” means payments of the DDOT Improvement Charge received by the Servicing Agent from Covered Customers.

“DDOT Improvement Property” has the meaning ascribed to such term in the preamble.

“DDOT Improvement Revenue” has the meaning ascribed to such term in the preamble.

“DDOT Improvement Property Records” means the books and records maintained by the Servicing Agent pertaining to the billing, collection and remittance of the DDOT Improvement Charge.

“DDOT Improvement Charge Rate Class” means a rate class of the Servicing Agent to which the DDOT Improvement Charge applies.

“Federal Funds Rate” means as of any day the rate reported for that day as the federal funds rate [as published for that day by the Wall Street Journal].

“Financing Order” has the meaning ascribed to such term in the preamble.

“GAAP” means the United States generally accepted accounting principles as applicable to the Servicing Agent.

“Governmental Authority” means any U.S. federal, state or local governmental, regulatory or administrative authority, instrumentality, agency, body or commission.

“Indemnified Person” has the meaning ascribed to such term in Section 5.03(a).

“Indenture” has the meaning ascribed to such term in the preamble.

“Indenture Trustee” has the meaning ascribed to such term in the preamble.

“Insolvency Event” means (i) the filing by or on behalf of Pepco of a voluntary bankruptcy petition, (ii) the involuntary filing of a bankruptcy petition against Pepco, which is not discharged within 60 days after the filing thereof or (iii) the making by Pepco of a general assignment of all or substantially all of its assets for the benefit of its creditors.

“Issuance Advice Letter” means the issuance advice letter referred to in Section 303(d) of the Act.

“Issuer” has the meaning ascribed to such term in the introductory paragraph.

“Law” means any law (including common law), statute, rule, regulation, ordinance, code, directive, requirement, binding agreement and other pronouncements or interpretations having the effect of law that have been issued, established or promulgated by any Governmental Authority, including without limitation the Utilities Code and Commission Regulations.

“Monthly Servicing Agent’s Certificate” has the meaning ascribed to such term in Section 3.03(a).

“Net Revenue Requirement” has the meaning ascribed to such term in Section 4.02(b)(ii).

“Payment Date” has the meaning ascribed to such term in the Indenture.

“Pepco” has the meaning ascribed to such term in the introductory paragraph.

“Periodic Payment Requirement” has the meaning ascribed to such term in the Indenture.

“Person” means any natural person, corporation, firm, joint venture, partnership, limited liability company, association, enterprise, thrust or other entity or organization or any Governmental Entity.

“Responsible Officer” means an officer of Pepco that is directly responsible for overseeing the activities conducted by Pepco in its capacity as the Servicing Agent.

“Semi-Annual Servicing Agent’s Certificate” has the meaning ascribed to such term in Section 3.03(b).

“Servicing Agent” has the meaning ascribed to such term in the introductory paragraph. In the event that a Successor Servicing Agent is appointed in accordance to Section 6.03, Servicing Agent shall mean such Successor Servicing Agent.

“Servicing Agent Business Day” means a day other than Saturday, Sunday or any day on which commercial banks located in Washington, D.C. are authorized or obligated to remain closed.

“Servicing Agent Default” has the meaning ascribed to such term in Section 6.01.

“Servicing Agent Policies and Practices” means the policies and practices customarily followed by the Servicing Agent follows in connection with the billing and collection of electric distribution charges for its own account (as such policies and practices may be modified from time to time).

“Servicing Fee” has the meaning ascribed to such term in Section 5.05.

“Successor Servicing Agent” means an entity that as successor to Pepco assumes the obligation of the servicing agent under the Act.

“Tariff” means Pepco’s General Terms and Conditions for Furnishing Electric Service in the District of Columbia together with the associated Rate Schedules for Electric Service in the District of Columbia, as each is in effect from time to time.

“True-Up Request” means a request for a true-up adjustment to the DDOT Improvement Charge filed with the Commission in accordance with Article IV of this Agreement and substantially in the form of Annex IV to this Agreement. Annex V provides a proposed form of public notice of a True-Up Request that is to be included with the True-Up Request pursuant to Section 314(b) of the Act.

“Underground Project Charge” has the meaning ascribed to such term in the Act.

“Utilities Code” means Chapter 34 of the District of Columbia Official Code.

ANNEX II

SERVICING PROCEDURES

The Servicing Agent agrees to comply with the following servicing procedures:

SECTION 1. DEFINITIONS.

Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Annex I to the Servicing Agreement.

SECTION 2. USAGE DETERMINATION AND BILLING CALCULATION.

The Servicing Agent shall in accordance with the Servicing Agent Policies and Practices (i) determine for each Billing Period each Customer's usage (which may be based on data obtained from such Customer's meter read or on usage estimates) and (b) calculate such Customer's DDOT Improvement Charge (as such charge may change from time to time pursuant to the True-Up Adjustments) applicable to such Customer for such Billing Period based on the terms of the Financing Order and the applicable Tariff.

SECTION 3. BILLING.

The Servicing Agent shall implement the DDOT Improvement Charges beginning effective as of the date of issuance of the Bond, and shall thereafter bill each Customer for outstanding current and past due DDOT Improvement Charges until such time as a DDOT Improvement Charge may be deemed uncollectible pursuant to the Servicing Agent Policies and Practices, all in accordance with the following:

(a) Frequency of Bills; Billing Practices. The DDOT Improvement Charge shall be billed at the same time and with same frequency as the Servicing Agent's own charges for electric distribution service and otherwise in accordance with the Servicing Agent Policies and Practices. In the event that the Servicing Agent makes any material modification to the Servicing Agent Policies and Practices that affects the billing or collection of the DDOT Improvement Charge, Servicing Agent shall promptly notify the Issuer; provided, however, that the Servicing Agent may not make any modification that would be reasonably expected to materially adversely affect the timely collection of the DDOT Improvement Charge.

(b) Format.

(i) Each Customer bill issued by the Servicing Agent shall show the DDOT Improvement Charge as a separate charge for the Billing Period.

(ii) The Servicing Agent shall, subject to clause (b)(i) above, determine the format, structure and text of all bills in its reasonable business judgment based on the Servicing Agent Policies and Practices and prevailing industry practices.

(c) Delivery. The Servicing Agent shall deliver all bills that include the DDOT Improvement Charge in accordance with the Servicing Agent Policies and Practices.

SECTION 4. CUSTOMER SERVICE FUNCTIONS.

The Servicing Agent shall handle all Customer inquiries and other Customer service matters with respect to the DDOT Improvement Charge according to the same procedures it uses to service Customers with respect to its own charges.

SECTION 5. COLLECTIONS; PAYMENT PROCESSING; REMITTANCE.

(a) Collection Efforts, Policies, Procedures.

(i) The Servicing Agent shall use reasonable efforts to collect from Customers all billed DDOT Improvement Charges as and when the same become due and shall follow such collection procedures as it follows with respect to collections for its own account, including the following:

- (A) the Servicing Agent shall prepare and deliver overdue notices to Customers in accordance with the Servicing Agent Policies and Practices;
- (B) the Servicing Agent shall deliver notices of delinquency and possible disconnection in accordance with the Servicing Agent Policies and Practices;
- (C) the Servicing Agent shall adhere to and carry out disconnection policies in accordance with the Servicing Agent Policies and Practices;
- (D) the Servicing Agent may employ the assistance of collection agents to collect any past-due DDOT Improvement Charges in accordance with the Servicing Agent Policies and Practices;
- (E) the Servicing Agent may sell accounts which include past-due DDOT Improvement Charges in accordance with the Servicing Agent Policies and Practices; and
- (F) the Servicing Agent shall apply Customer deposits and other forms of credit support or payment security (including letters of credit) to the payment of delinquent accounts in accordance with Servicing Agent Policies and Practices.

(ii) The Servicing Agent shall be permitted with respect the DDOT Improvement Charge to (i) waive, vary or modify the amount or terms of any payment due from a customer, (ii) waive, in whole or in part, any late payment charge or other delinquent payment fee, (iii) write off any customer receivables that the Servicing Agent deems uncollectable or (iv) take or refrain from taking legal action to collect any amount due, in each case consistent with the Servicing Agent Policies and Practices, but only if such taking or refraining from taking of

legal action would not reasonably be expected to materially adversely affect the timely collection of the DDOT Improvement Charges.

(iii) The Servicing Agent shall accept payment from Customers in respect of billed DDOT Improvement Charges in such forms, by such methods and at such times and places as it accepts payment of electric distribution charges collected for its own account.

(b) Payment Processing, Allocation and Priority of Payments.

(i) The Servicing Agent shall post all payments received from Customers in respect of DDOT Improvement Charges to the applicable Customer account as promptly as practicable, and, shall make reasonable efforts to post substantially all such payments no later than three Servicing Agent Business Days after receipt. The Servicing Agent will determine the amount of DDOT Improvement Charge collected from each DDOT Improvement Charge Rate Class in accordance with its Servicing Agent Policies and Practices, and as summarized herein:

- (A) On a monthly basis, the Servicing Agent shall determine the ratio of the billed DDOT Improvement Charges to the total Customer billings (including the DDOT Improvement Charge) for each DDOT Improvement Charge Rate Class. This ratio for each Customer Rate Class (each a "Billing Ratio") will be applied to actual Customer collections for each DDOT Improvement Charge Rate Class, beginning on the 15th day of the following month in which this ratio applies and will continue to be applied until the 15th day of the next following month and used to calculate the Daily Remittance.
- (B) In order to calculate the amount which is required to be remitted to the Collection Account on any Servicer Business Day, the Servicing Agent shall multiply actual Customer collections for each Customer Rate Class on each such day by the Billing Ratio. The aggregate amount will represent the estimated daily collection of DDOT Improvement Charges (the "Daily Remittance"), and will be remitted to the Collection Account no later than three Servicing Agent Business Days following the estimated collection thereof, in accordance with Section 3.05 of this Agreement. Pending such remittance, the Daily Remittance will be segregated and held in trust for the Trustee.
- (C) Not less often than semi-annually, and as frequently as quarterly if requested by the Issuer, the Servicing Agent will review its receivable days outstanding data, its collection curve data and its delinquency and write off data to ensure that the Daily Remittances being made to the Collection Account correspond, as closely as practicable, to the actual DDOT Improvement collections received by the Servicing Agent on each Servicing Agent Business Day. The parties agree that the purpose of these reviews and adjustment procedures is to assure that DDOT Improvement Charge Revenues received by the Servicing Agent are

remitted, to the extent practicable, to the Collection Account within three Servicing Business Days of actual receipt thereof.

- (D) Not later than 30 days after the end of each review conducted pursuant to paragraph (B) above, the Servicing Agent will true-up any over-remittance or under-remittance of Daily Remittances for the most recent semi-annual (or quarterly) period, to reflect the revised estimate of DDOT Improvement Charge collections received by the Servicing Agent during such period. Any resulting over-remittance or under-remittance shall be deducted from, or added to, the Daily Remittance or Remittances within 10 Servicing Agent Business Days.
- (E) The use, by the Servicing Agent of any reasonable estimate to determine the amount of the Daily Remittance, all in accordance with its customary Servicing Agent Policies and Procedures, and applied on a consistent basis, shall not be prohibited.

(c) Accounts and Records.

The Servicing Agent shall maintain accounts and records as to the DDOT Improvement Charges in accordance with its standard accounting procedures and in sufficient detail to permit reconciliation between DDOT Improvement Charge collections and the remittance thereof to the Collection Account. Pending remittance of funds collected in respect of the DDOT Improvement Charges, such funds may be commingled by the Servicing Agent with other assets of the Servicing Agent held for its own account or for the account of others, subject to the condition that such funds shall be accounted for in a manner that allows them to be properly identified and traced.

(d) Remittances.

(i) The Servicing Agent shall make remittances to the Collection Account in accordance with Section 3.05 of the Agreement.

(ii) In the event of any change of account or change of institution affecting the Collection Account, the Issuer shall provide written notice thereof to the Servicing Agent not later than five Servicing Agent Business Days prior to the effective date of such change.

ANNEX III

TRUE-UP ADJUSTMENT MECHANISM AND MATHEMATICAL FORMULA

True-Up Adjustment Calculation

As provided by the Servicing Agreement, the Servicing Agent will file with the Commission to adjust (each, a “True-Up Request”) the DDOT Underground Infrastructure Improvement Charge (the “DDOT Improvement Charge”) at least semi-annually on or before March 1 and September 1 of each year; provided, however, that the first True-Up Request will be filed at least 6 months but no more than 12 months after the date of the issuance of the Bonds. True-Up Requests will be filed with the Commission until the principal and interest on the Bonds and all other Ongoing Financing Costs are paid in full. The filing of True-Up Requests semi-annually will be performed by the Servicing Agent on a mandatory basis. In certain circumstances described below, however, the Servicing Agent will be required to file True-Up Requests quarterly rather than semi-annually. In addition, the Servicing Agent may file an interim True-Up Request at any time as more fully described below.

A True-Up Request shall be in the form required by the Financing Order. The date a True-Up Request is filed with the Commission is referred to as an “Adjustment Date.”

Semi-annually, the Servicing Agent will file a True-Up Request (i) to correct for any over-collections or under-collections through the date of calculation and collections anticipated to occur through the Adjustment Date, and (ii) to ensure that the expected collections of the DDOT Improvement Charge on and after the Adjustment Date and through the period (the “Calculation Period”) ending on the next succeeding Adjustment Date (in the case of semi-annual True-Up Requests, the Calculation Period will be 6 months) are adequate: (a) to pay timely all principal and interest due on the Bonds pursuant to the expected amortization schedule and to accrue for all unpaid debt service through the end of the Calculation Period; (b) to replenish any required reserves with respect to the Bonds; and (c) to make timely payment of all other Ongoing Financing Costs through the end of the Calculation Period (collectively, the “Revenue Requirement”).

Following the expected maturity date of the last maturing series or tranche of the Bonds, if any Bonds remain outstanding after such expected maturity date, the Servicing Agent will be required to file quarterly True-Up Requests to adjust the DDOT Improvement Charge to ensure that the Revenue Requirement will be satisfied during the Calculation Period ending on the next Bond payment date.

Additionally, if the District at any time determines that the DDOT Improvement Revenue is insufficient to satisfy the Revenue Requirement and that it would be imprudent to defer an adjustment to the DDOT Improvement Charge until the next mandatory True-Up Request is filed, the District and the Servicing Agent will cooperate such that the Servicing Agent will file an interim True-Up Request with the Commission seeking an interim adjustment to the DDOT

Improvement Charge (an “Interim True-Up Adjustment Filing”) to ensure that the expected collections of the DDOT Improvement Charge is adequate to satisfy the Revenue Requirement.

To facilitate the District’s assessment of the need for an interim True-Up Request, following the occurrence of an event of force majeure (including fire, flood, earthquake, storm, hurricane or other natural disaster, war, act of foreign enemies, terrorism, labor dispute, strike, or lockout) which the Servicing Agent reasonably expects may cause the DDOT Improvement Revenue to be insufficient to satisfy the Revenue Requirement, the Servicing Agent shall provide prompt written notice of such expectation to the District.

All True-Up Requests will be designed to cause (i) the outstanding principal balance of all series or tranches of the Bonds, as applicable, to be equal to the expected balance (based on the expected amortization schedule) with respect to the Bonds; (ii) all debt service accruing on the Bonds through the end of the Calculation Period to be fully paid or provided for; (iii) the amount in any required reserve with respect to the Bonds to be equal to the required reserve level; (iv) any residual or excess funds subaccount to be targeted to be zero by the end of the Calculation Period; and (v) the timely payment of all other Ongoing Financing Costs.

Each True Up Request shall be implemented as follows:

1. At least thirty days prior to each Adjustment Date (the “Calculation Date”), the District shall provide to the Servicing Agent, or cause the Indenture Trustee to provide to the Servicing Agent:
 - (a) The amount on deposit in the Collection Account, as of the most recent date practicable.
 - (b) A schedule showing the Revenue Requirement for the next Calculation Period based on: (i) the projected debt service on the Bonds (amounts due and amounts to be accrued); (ii) any replenishment required to be made to any reserve account and (iii) the timely payment of all other Ongoing Financing Costs during such Calculation Period.
 - (c) Updated information regarding the amounts referred to in clauses (a) and (b) as the Servicing Agent shall reasonably request.
2. The Servicing Agent shall subtract (i) the sum of amounts provided for in step 1(a) above and amounts expected to be collected and remitted based upon the DDOT Improvement Charge then in effect following the Calculation Date from (ii) the Revenue Requirement for the next Calculation Period as provided by the District in step 1(b) above (the result being the “Net Revenue Requirement” for the next Calculation Period).
3. The Servicing Agent shall prepare and provide to the District an update of the electric company customer data and assumptions underlying the calculation of the DDOT Improvement Charge, including projected uncollectable amounts and billing lags for each DDOT Improvement Charge Rate Class.

4. The Servicing Agent shall determine the DDOT Improvement Charge to be allocated to each DDOT Improvement Charge Rate Class (as defined in the Servicing Agreement) during the next Calculation Period by multiplying the Net Revenue Requirement determined in step 2 above by the Class Allocation Factor (as defined below)

5. For each DDOT Improvement Charge Rate Class divide the amount in step 4 above by the forecasted energy billing units (adjusted for each class's projected uncollectible amounts and billing lags as provided to the District in step 3 above) to determine the DDOT Improvement Charge for the next Calculation Period.

In accordance with Section 314(d) of the Act, the DDOT Improvement Charge in any True-Up Request filed with the Commission shall go into effect on the Adjustment Date.

Allocation Methodology

The "Class Allocation Factor" used in each True-Up Request will be the cost allocation factors for each Class used in the most recently approved electric company distribution service base rate case.

ANNEX IV

FORM OF TRUE-UP REQUEST

[Date]

[Name]

[Title]

Public Service Commission
of the District of Columbia
1333 H Street, N.W.
West Tower, Second Floor
Washington, DC 20005

Re: Financing Order; Formal Case 1121

Dear []:

Pursuant to the Commission's Financing Order adopted on [], 2014, in the above-referenced matter (the "Financing Order"), Potomac Electric Power Company, the Servicing Agent, pursuant to the DDOT Property Servicing Agreement, dated as of [], 201_ (the "Servicing Agreement"), by and between the District of Columbia (the "Issuer") and Potomac Electric Power Company, as Servicing Agent, submits, in its capacity as designee of the Issuer, this True-Up Request for a [Semiannual][Quarterly][Optional] True-Up Adjustment to the DDOT Underground Electric Company Infrastructure Improvement Charge (the "DDOT Improvement Charge"). Any capitalized terms not defined herein shall have the meanings ascribed thereto in the Financing Order.

Based on the Periodic Payment Requirement for the Collection Period [commencing [date], and ending on [date] provided by the Issuer to the Servicing Agent, in accordance with the Servicing Agreement, and the electric company data and assumptions underlying the calculation of the DDOT Improvement Charge, the Servicing Agent has determined the DDOT Improvement Charge allocable and assigned to each DDOT Improvement Charge Rate Class for the next Collection Period in accordance with the terms of the Servicing Agreement and the Act and using the formula approved by the Commission in the Financing Order. The DDOT Improvement Charge for each DDOT Improvement Charge Rate Class for the next Collection Period is attached hereto as Schedule 1. The accounting work papers used in calculating the DDOT Improvement Charges in Schedule 1, including the receipts and remittances of the DDOT Charges to the Trustee are attached hereto as Attachment 1. The form of the proposed form of public notice suitable for publication by the Commission required by the Act is included in Annex 5.

Pursuant to the Act, the DDOT Improvement Charges in Schedule 1 hereto shall go into effect immediately upon the filing of this True-Up Request with the Commission, subject to adjustment as provided in the Act and the Financing Order. Any interested party may file comments with the Commission with respect to the mathematical accuracy of the Servicing

Agent's calculations with respect to DDOT Improvement Charges within 10 days of the request for approval of Schedule 1 evidenced by the filing of this True-Up Request. The Commission will act upon a request for approval of Schedule 1 within 20 days of the comment period noted in the previous sentence, but the review by the Commission is limited to determining if there has been a mathematical error in the application of the True-Up Mechanism. If the Commission does not act within such 20 day period to identify and correct any mathematical error in the application of the True-Up Mechanism, the request for approval of Schedule 1 shall be deemed approved.

Respectfully submitted,

POTOMAC ELECTRIC POWER COMPANY,
as Servicing Agent

By: _____
Name: _____
Title: _____

Attachments

SCHEDULE 1

DDOT IMPROVEMENT CHARGE ILLUSTRATIVE TRUE UP RATE DESIGN

Residential RAD RTM RES - A E **GS-ND GS-D-LV GS-3A GT-LV GT-3A GT-3B RT SI/TS TN

DDOT Improvement
Charges (\$/kWhr)

ANNEX V

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

PUBLIC NOTICE

**FORMAL CASE NO. 1121, IN THE MATTER OF THE APPLICATION OF
POTOMAC ELECTRIC POWER COMPANY FOR ISSUANCE OF A
FINANCING ORDER UNDER THE ELECTRIC COMPANY
INFRASTRUCTURE IMPROVEMENT FINANCING ACT**

The Public Service Commission of the District of Columbia (“Commission”) hereby gives notice, pursuant to Section 314 of the Electric Company Infrastructure Improvement Financing Act of 2014 (“Act”) (D.C. Law Act 20-102, effective May 3, 2014), and Order No. _____ (the “Financing Order”) issued by the Commission on [_____, 2014] in Formal Case No. 1121, that on [_____, 20__], Potomac Electric Power Company (“Pepco”), pursuant to the terms of the DDOT Property Servicing Agreement (the “Servicing Agreement”), between the District of Columbia (the “District”) and Pepco, in its capacity as Servicing Agent for the District (in such capacity, the “Servicing Agent”), filed a request for approval of a schedule applying the true-up mechanism (“True-Up Mechanism”) approved in the Financing Order to the DDOT Underground Electric Company Infrastructure Improvement Charge (the “True-Up Request”). Terms used in this notice but not defined herein shall have the meaning ascribed to them in the Financing Order.

In accordance with Section 314(a) of the Act, the Servicing Agent has determined that upon the filing of the True-Up Request, the DDOT Underground Electric Company Infrastructure Improvement Charge will be approximately [_____] cents per day for a typical residential customer who uses [----]kWh per month. The DDOT Underground Electric Company Infrastructure Improvement Charge in the True-Up Request is designed to collect \$[_____] in total revenues during the next six (6) months which will be sufficient to pay debt service on the Bonds and all other Ongoing Finance Costs.

Consistent with the Act and the Financing Order, the DDOT Underground Electric Company Infrastructure Improvement Charge is imposed only on Customers and is allocated among Customer classes in accordance with the distribution service customer class cost allocations approved in Pepco’s most recent electric distribution service base rate case, Formal Case No. _____. Upon the filing of the True-Up Request, the DDOT Underground Electric Company Infrastructure Improvement Charge rates for each Rate Schedule became as follows:

Rate Schedule

R	per kWh
AE	per kWh
RTM	per kWh
GS ND	per kWh
T	per kWh
GS LV	per kWh
GS 3A	per kWh
GT LV	per kWh
GT 3A	per kWh
GT 3B	per kWh
RT	per kWh
SL/TS	per kWh
TN	per kWh

The average monthly effects of the proposed DDOT Improvement Charges rates will be:

<u>Rate Schedule*</u>	<u>Average Monthly Usage</u>	<u>Monthly Increase for Standard Offer Service Customers</u>	
		<u>Total Bill**</u>	<u>% of average monthly Bill</u>
Residential - Standard (R)			
Residential - All Electric (AE)			
Residential Aid Discount (RAD)		NA	NA
Residential Aid Discount - All Electric (RAD AE)		NA	NA
Residential Time-of-Use (RTM)			
GS Non-Demand (GS ND)			
GS Low Voltage (GS LV)			
GS Primary (GS 3A)			
Temporary			
GT - Low Voltage (GT LV)			
GT - Primary (GT 3A)			
GT - High Voltage (GT 3B)			
Rapid Transit (RT)			
Street Lighting (SL) *** and Traffic Signals (TS) combined ***			
Telecommunications Network (TN)			
Street Lighting Maintenance (SSL OH and SSL UG) ***			

* The effect of the proposed rates on any particular customer is dependent upon the actual usage of the customer. Increases shown are for customers with the average monthly usage.

**** Standard Offer Service customers purchase their electricity from Pepco. For those customers who purchase their electricity from competitive suppliers (i.e., suppliers other than Pepco), the dollar amounts and percentages in the Total Bill column are not applicable. The DDOT Underground Electric Company Infrastructure Improvement Charge is still applicable to such Customers.**

***** The Street Lighting and Traffic Signal increases shown refer to the total class.**

As provided by Section 314(d) of the Act, any interested party may file comments with the Commission with respect to the mathematical calculations contained in the True-Up Request no later than [_____, ____]. [insert date 10 days after the filing of the True-Up Request]

All written comments should be sent to [Ms. Brinda Westbrook-Sedgwick], Commission Secretary, Public Service Commission of the District of Columbia, 1333 "H" Street, N.W., 2nd Floor, West Tower, Washington, D.C. 20005.

The True-Up Request is available for inspection at the Commission's Office of the Commission Secretary, 1333 "H" Street, NW, 2nd Floor – West Tower between the hours of 9:00 a.m. and 5:30 p.m., Monday through Friday. Copies of the True-Up Request can be purchased at the Commission at a cost of \$0.____ per page, actual reproduction cost. The True-Up Request may also be inspected at the following public libraries:

Ward	Name and Address
	INSERT AS APPLICABLE

APPENDIX B - FORM OF ISSUANCE ADVICE LETTER

[Date]

[Name]

[Title]

Public Service Commission
of the District of Columbia
1333 H Street, N.W.
West Tower, Second Floor
Washington, DC 20005

Re: Financing Order; Formal Case No. 1121-Issuance Advice Letter

ISSUANCE ADVICE LETTER

Pursuant to Order No. XX (the “Financing Order”), issued by the Public Service Commission of the District of Columbia (the “Commission”) on _____, 2015, in Formal Case No. 1121, and Section 303(d) of Electric Company Infrastructure Improvement Financing Act of 2014 (the “Act”), the District of Columbia hereby submits this Issuance Advice Letter to the Commission with respect to the issuance of [DDOT Underground Electric Company Infrastructure Improvement Bonds] priced on _____, 2015 (the “Bonds”). Any capitalized terms not defined in this Issuance Advice Letter shall have the meanings ascribed to them in the Financing Order.

PURPOSE:

This filing provides information concerning the Bonds, including the DDOT Annual Revenue Requirement, the average term of the Bonds, and the retirement schedules for the Bonds, as well as the initial DDOT Improvement Charge. The foregoing information is contained in the following tables and schedules attached hereto, as indexed below:

- (a) Summary Terms of Issuance (See Table 1);
- (b) Principal Amount and Maturities (Table 2);
- (c) Pricing Information (including interest rates) (Table 3);
- (d) Effective Annual Weighted Average Yield and Effective Weighted Average Life (Table 4);
- (e) Application of Bond Proceeds (Including Estimated Final Upfront Financing Costs) (Table 5);
- (e) Annual Debt Service (Schedule A);
- (f) Total Estimated Initial DDOT Annual Revenue Requirement (Schedule B);
- (g) Expected DDOT Annual Revenue Requirement (Schedule C); and
- (g) Initial DDOT Improvement Charges (Schedule D), including workpapers.

TABLE 1: SUMMARY TERMS OF ISSUANCE:

Par Amount Issued (Taxable):	
Par Amount Issued (Tax-Exempt):	
Aggregate Par Amount Issued:	
Net Original Issue Premium Amount:	
Trustee:	
Sale Date:	
Closing Date:	
Expected Ratings:	
Optional Redemption Provisions (Taxable):	
Optional Redemption Provisions (Tax-Exempt):	
Payments to Holders:	Semiannually, beginning on []

TABLE 2: PRINCIPAL AMOUNT AND MATURITIES:

Series/Tranche	Principal Amount	Expected Maturity Date	Legal Final Maturity Date
Taxable T-1		__/__/____	__/__/____
Taxable T-2		__/__/____	__/__/____
Taxable T-3		__/__/____	__/__/____
Tax-Exempt TE-1		__/__/____	__/__/____
Tax-Exempt TE-2		__/__/____	__/__/____
Tax-Exempt TE-3		__/__/____	__/__/____
Tax-Exempt TE-4 (etc.)		__/__/____	__/__/____
Total			

TABLE 3: PRICING INFORMATION, INCLUDING INTEREST RATES:

Series/Tranche	Expected Maturity Date	Legal Final Maturity Date	Interest Rate	Yield	Price to Public
Taxable T-1					
Taxable T-2					
Taxable T-3					
Tax-Exempt TE-1					
Tax-Exempt TE-2					
Tax-Exempt TE-3					
Tax-Exempt TE-4 (etc.)					
Total					

TABLE 4: AVERAGE YIELD AND AVERAGE LIFE

Effective Annual Weighted Average Yield on the Bonds:	
Expected Weighted Average Life of Issuance:	

TABLE 5: APPLICATION OF BOND PROCEEDS (INCLUDING ESTIMATED FINAL UPFRONT FINANCING COSTS):

		AMOUNT
1	Gross Proceeds	\$
2	Funding of reserve account	
3	Rating agency fees (two agencies)	
4	Bond Counsel, Transaction Counsel, Disclosure Counsel and Underwriters' Counsel Legal Fees and Expenses	
5	Printing and Filing Fees	
6	Underwriting & Structuring Fee and Expenses	
7	Upfront Trustee's / Trustee Counsel's Fees and Expenses	
8	Accountant's / Auditor's Fees	
9	Financial Advisor Fees and Expenses (District)	
10	Financial Advisor Fees and Expenses (PSC)	
11	Miscellaneous	
12	Total estimated Upfront Financing Costs (Sum of Lines 2 through 11)	
13	Net Proceeds (Line 1 – Line 12) deposited into DDOT Improvement Fund	\$

This Issuance Advice Letter is submitted this _____ day of _____ 2015.

Respectfully,

DISTRICT OF COLUMBIA, as Issuer

By: _____
Name:
Title:

SCHEDULE A

ANNUAL DEBT SERVICE

Taxable				
Payment Date	Principal Balance	Interest	Principal	Total Payment

Tax-Exempt				
Payment Date	Principal Balance	Interest	Principal	Total Payment

SCHEDULE B

TOTAL ESTIMATED INITIAL DDOT ANNUAL REVENUE REQUIREMENT

	<u>INITIAL ANNUAL AMOUNT</u>
Ongoing Financing Costs	
Debt Service	
Ongoing Servicer fee (Pepco as Servicer)	
Servicing expenses	
Issuer's fees and expenses	
Bond Trustee Fees and Expenses	
Legal fees	
Accounting fees	
Rating Agency fees	
Reporting and filing fees	
Miscellaneous	
TOTAL ESTIMATED INITIAL DDOT ANNUAL REVENUE REQUIREMENT	

SCHEDULE C

EXPECTED DDOT ANNUAL REVENUE REQUIREMENT

	<u>Principal</u>	<u>Interest</u>	<u>Debt Service Reserve Fund*</u>	<u>Total Net Debt Service</u>	<u>Plus: Servicing Fee (7.5 bps)</u>	<u>Ongoing Financing Costs (Excl. Servicing)</u>	<u>Net Revenue Requirement</u>
Mar-15 (closing)							
Jul-15							
Jan-16							
Jul-16							
Jan-17							
Jul-17							
Jan-18							
Jul-18							
Jan-19							
Jul-19							
Jan-20							
Jul-20							
Jan-21							
Jul-21							
Jan-22							
Jul-22							
Jan-23							
Jul-23							
Jan-24							
Jul-24							
Jan-25							
Jul-25							
Jan-26							
Jul-26							
Jan-27							
Jul-27							
Jan-28							
Jul-28							
Jan-29							
Jul-29							
Jan-30							
Jul-30							
Jan-31							
Jul-31							
Jan-32							
Jul-32							
Jan-33							
Total							

