

ORDER NO. 88956

IN THE MATTER OF THE APPLICATION
OF THE POTOMAC EDISON COMPANY
FOR ADJUSTMENTS TO ITS RETAIL
RATES FOR THE DISTRIBUTION OF
ELECTRIC ENERGY

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9490

Issue Date: December 19, 2018

To: All Parties of Record

On December 10, 2018, the Potomac Edison Company (“Potomac Edison” or “the Company”) filed with the Maryland Public Service Commission (“Commission”) a Motion to Enforce the Procedural Schedule and Strike Portions of the Revised Direct Testimony of OPC Witnesses Pavlovic and Effron (“Motion to Strike.”) The Company asked that the Commission provide an expedited review of the Motion to Strike, given the approaching rebuttal testimony deadline. On December 11, 2018, the Commission issued a Notice of Opportunity to Respond, requiring that any response to the Motion to Strike be filed by December 13, 2018. On that date, the Maryland Office of People’s Counsel (“OPC”) filed its Response in Opposition. For the reasons discussed below, Potomac Edison’s Motion to Strike is denied.

Potomac Edison’s Motion to Strike contends that OPC made substantive revisions to the pre-filed direct testimonies of Mr. Effron and Dr. Pavlovic through the filing of an

“errata,” which added nearly \$800,000 of “new alleged excess revenue.”¹ The Company states that the changes to OPC’s position on revenue requirement result from Mr. Effron revising his rate base calculations to take into account conclusions reached by Dr. Pavlovic regarding the Company’s jurisdictional separation study. Additionally, the changes to OPC’s position on class rates of return result from Dr. Pavlovic revising his proposed rates of return to reflect OPC witness James Garren’s calculations regarding depreciation rates. Potomac Edison argues that “[t]hese substantive revisions are not in the nature of typographical errors that are appropriate for an errata.”² Additionally, the Company contends that OPC’s errata filing is particularly unfair because “Mr. Effron specifically testified in his original direct testimony that he chose not to make these adjustments.”³ Potomac Edison requests that the revised portions of Mr. Effron’s and Dr. Pavlovic’s direct testimonies that make substantive changes be stricken.

OPC disputes the notion that its errata filing constitutes a substantive change to its witnesses’ direct testimonies. Instead, OPC argues that it made a “jurisdictional clarification,” by adding Dr. Pavlovic’s jurisdictional revenue adjustment to Mr. Effron’s revenue requirement calculation.⁴ In that regard, OPC notes that Mr. Effron explicitly stated in his Direct Testimony that “[m]y calculation of the revenue excess does not take into account the effect of Dr. Pavlovic’s proposed allocation adjustment on the company’s jurisdictional revenue requirement.”⁵ OPC further states that it made a “rate design correction” to Dr. Pavlovic’s testimony by applying Mr. Garren’s calculated

¹ Motion to Strike at 2.

² Motion to Strike at 3.

³ Motion to Strike at 7. Potomac Edison referenced the Direct Testimony of Mr. Effron at 2 that acknowledges he did not include Dr. Pavlovic’s adjustment.

⁴ OPC Response in Opposition at 1.

⁵ OPC Response in Opposition at 2-3, citing Effron Direct at 2.

depreciation rates to sub-transmission plant. OPC states that Dr. Pavlovic mistakenly applied these balances to distribution plant only. OPC further notes that on November 27, 2018, Potomac Edison propounded a data request to OPC asking why Mr. Efron did not take Dr. Pavlovic's proposed adjustments into account. OPC states that it responded on December 4, 2018, that it would "file erratas to the testimonies of Mr. Efron and Dr. Pavlovic reflecting Mr. Efron's incorporation of Dr. Pavlovic's adjustments to the Company's jurisdictional revenue requirement."⁶ OPC states that it filed the erratas the next day and that they serve merely to make "aggregate[] the revenue-impacting adjustments of two OPC witnesses — both of which were evident in the original versions of the two witnesses' testimonies — in the same place."⁷

The Commission denies Potomac Edison's Motion to Strike. The errata filings made by OPC do not present new substantive positions that the Company has not seen before. Instead, they correct the oversight of Dr. Pavlovic mistakenly applying Mr. Garren's depreciation rates only to Potomac Edison's distribution plant balance, but not its sub-transmission plant balances. Additionally, Mr. Efron's revision to revenue requirement merely reflects Dr. Pavlovic's jurisdictional adjustment. This revision serves to make the testimony of OPC witnesses consistent — it does not constitute a new substantive argument to which Potomac Edison would be unfairly required to respond. Furthermore, the Company has not been prejudiced by the errata. OPC's response to Potomac Edison's data request made the position of its witnesses clear as of December 4, 2018, two weeks before the Company's rebuttal testimony deadline,

⁶ OPC Response in Opposition at 4.

⁷ OPC Response in Opposition at 4.

providing adequate time for its response to be included in rebuttal. Accordingly, Potomac Edison's Motion to Strike is hereby denied.

IT IS THEREFORE, this 19th day of December, in the year Two Thousand Eighteen, by the Public Service Commission of Maryland,

ORDERED: That the Motion to Enforce the Procedural Schedule and Strike Portions of the Revised Direct Testimony of OPC Witnesses Pavlovic and Effron of the Potomac Edison Company is hereby denied.

By Direction of the Commission,

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary