ORDER NO. 91048

Potomac Electric Power Company's Application for Adjustments to its Retail Rates for the Distribution of Electric Energy	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9702

Issue Date: March 4, 2024

ORDER GRANTING MOTION TO STRIKE

On November 28, 2023, the Maryland Office of People's Counsel ("OPC") filed a Motion to Strike Potomac Electric Power Company's ("Pepco" or "Company") Proposed Climate Solutions Programs from the Company's pending multi-year rate case.[1] The Commission's Technical Staff ("Staff") filed a letter supporting OPC's Motion on December 4, 2023.[2] The Maryland Energy Administration ("MEA") also filed a letter in support of OPC's Motion on December 5, 2023.[3]

On December 28, 2023, Pepco filed a response, opposing OPC's Motion.[4] Thereafter, on January 17, 2024, OPC filed a response to Pepco's Opposition.[5] For reasons discussed below, with the exception of the Smart Inverter Pilot Program, and subject to Pepco's right to file its climate solutions programs in totem or as amended in separate

[1] Maillog No. 306343. OPC's Motion to Strike Pepco's Proposed Climate Solutions Programs (filed November 28, 2023).

[2] Maillog No. 306473. Office of Staff Counsel Letter Supporting OPC's Motion (filed December 4, 2023).

[3] Maillog No. 306495. The Maryland Energy Administration Letter Supporting OPC's Motion (filed on December 5, 2023).

[4] Maillog No. 306913. Pepco's Opposition to OPC's Motion to Strike Pepco's Proposed Climate Solutions Programs (filed December 28, 2023).

[5] Maillog No. 307164. OPC's Reply to Pepco's Opposition to OPC's Motion to Strike Pepco's Proposed Climate Solutions Programs (filed January 17, 2024).

related dockets including, without limitation, the EmPOWER Maryland docket, the Electric Vehicle docket or another generic docket, the Commission grants OPC's Motion.

A. OPC's Motion to Strike

In its Motion, OPC requests that the Commission strike Pepco's Proposed Climate Solutions Programs[6] from the multi-year rate case proceeding for two primary reasons. *First*, OPC argues that consideration of the Climate Solutions Programs would require that the Commission make major policy decisions about electrification and the Company's and its ratepayers' roles in electrification in a rate case proceeding which OPC contends is not designed for such decision making.[7] *Second*, OPC contends that "Pepco's proposal to rate-base the cost of rebates to fund customer-side equipment and upgrades is contrary to established ratemaking principles, which authorize utilities to collect a rate of return on property that it owns and uses to provide service to customers."[8] A third reason OPC offers for removing Pepco's Proposed Climate Solutions Programs from the Company's MYP 2 is that all the programs could be appropriately considered in other active Commission dockets.

1. Consideration of major policy changes within a base rate case

OPC notes that in Baltimore Gas and Electric Company's ("BGE") application for its second multi-year plan in Case No. 9692, BGE also proposed a customer electrification plan. BGE's electrification plan comprised three primary categories including building

[6] Pepco's Climate Solutions Program consists of four portfolios: Electrifying Transportation, Planning Efficient Electrification, Decarbonizing Buildings, and Activating the Local Energy Ecosystem. Pepco proposes to spend nearly $151 million on the programs over the term of the MYP 2 and to defer the expenditures to four regulatory assets which the Company plans to begin recovering through base rates starting in MYP 2. *See* OPC Motion at 1-2.
[7] *Id*. at 2-3.
[8] *Id*. at 4.

electrification, non-road electrification, and workforce development. In that case, OPC also filed a motion to strike or, in the alternative, dismiss BGE's proposed "customer electrification plan".[9]

On August 9, 2023, the Commission issued Order No. 90755 granting OPC's motion to strike in Case No. 9692, without prejudice to BGE's filing its electrification plan in another docket.[10] OPC notes that in that case, the Commission found that "policy decisions to address and pay for electrification to meet the requirements of the CSNA [Climate Solutions Now Act] should not be made in isolation in a single utility's MYP."[11]

In the present case, OPC argues that like BGE's proposed electrification plan, Pepco's Climate Solutions Programs "present major policy proposals that are wholly inappropriate for consideration in a base rate case."[12] OPC contends that at least two of Pepco's proposed programs are appropriate for consideration in other active dockets.[13] Namely, OPC notes that Pepco's Electrifying Transportation portfolio is a new phase of the Company's electric vehicle ("EV") program and should be considered in Case No. 9478.[14] Additionally, OPC argues that Pepco's Beneficial Electrification program belongs in Case No. 9705 – the Commission's 2024-2026 EmPOWER docket.[15] Since two of

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[9] Maillog No. 303632.
[10] OPC Motion at 7.
[11] *Id*., citing Order No. 90755, *Re Baltimore Gas and Electric Company's Application for an Electric and Gas Multi-Year Plan*, Case No. 9692, slip op. at 9 (Aug. 9, 2023). OPC notes further that the Commission agreed that "it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than in a base rate case, where the parties and the Commission are required to address a multitude of issues in a constrained time frame."
[12] OPC Motion at 11.
[13] *Id*. at 3.
[14] *Id*.
[15] *Id*.

Pepco's proposed programs arguably belong in other active dockets, OPC notes that Pepco may be motivated to include them in the MYP 2 in order to include the costs in base rates.[16]

OPC argues that Pepco's Beneficial Electrification and Planning for Efficient Electrification programs implicate a number of questions similar to those presented by BGE's customer electrification plan, including whether utilities should be allowed to rate-base the costs of investments in behind-the-meter infrastructure the utility does not own, what rates of return would be appropriate for non-capital program costs, and the extent to which proactive "make-ready" investments are appropriate.[17] Further, OPC notes that Pepco's Transportation Electrification portfolio raises questions about what services and incentives utilities should provide in today's rapidly evolving EV market landscape to facilitate transportation electrification and that the Company's smart inverter pilot raises both technical issues about the functionality of smart inverters and policy issues regarding utility control and management of distributed energy resources ("DERs").[18]

While these issues should be addressed, OPC argues that a base rate case is the wrong place to do so. OPC notes that a base rate case has a "narrow purpose" – that is – to set just and reasonable rates that provide a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.[19] OPC points out that the Commission's adoption of the MYP pilot did not change the narrow purpose of a base rate case but was focused on addressing "the perceived harms from 'regulatory lag' of the standard ratemaking process and to make revenues more predictable

[16] *Id*. at 11-12.
[17] *Id*. at 12.
[18] *Id*.
[19] *Id*.

for customers, decrease administrative burdens and promote transparency concerning utility planning processes."[20] OPC notes that the purpose of MYPs were to help the Commission facilitate achieving the State's policy goals but MYPs were not intended as vehicles for entirely new programs unrelated to the determination of the fair value of the public service company's property used and useful in providing service to the public.[21]

2. Rate-basing customer-side equipment

OPC argues that Pepco's proposal to rate base the costs of rebates and other non-capital electrification program costs is inappropriate because it would entail a "radical and improper expansion" of the electric utility business model in Maryland.[22] OPC explains that Pepco's proposal entails putting the cost of rebates—monies—into rate base, effectively casting Pepco in the role of electrification financier.[23] Pepco would achieve this by placing into rate base "more than $100 million in electrification rebates" for equipment and infrastructure that will be owned and maintained by customers and located on the customer side of the meter.[24] OPC notes that Pepco's proposal could also be viewed as putting into rate base the appliances and EV chargers that the rebates help customers acquire, which OPC argues is inconsistent with core ratemaking principles because the utilities do not own customer equipment and cannot depreciate it.[25]

Noting that Public Utilities Article § 4-101 provides that utilities are entitled to just and reasonable rates which are rates that yield "a reasonable return on the fair value of the

[20] *Id*. at 13.
[21] *Id*.
[22] *Id*. at 23.
[23] *Id*.
[24] *Id*.
[25] *Id*.

public service company's property used and useful in providing service to the public" after reasonable deduction for depreciation and other necessary expenses and reserves, OPC assesses that Pepco's proposal would give the Company a return on money (via the cost of rebates) and not Company property as intended by statute.[26] OPC argues that this would make Pepco's posture akin "to the role of a bank, rather than a utility."[27]

OPC also argues that Pepco's proposal diverges from the Commission's ratemaking principles concerning regulatory assets. The Commission has allowed utilities to use this accounting mechanism in extraordinary circumstances generally for non-recurring expenditures on non-capital assets. OPC points out that in Pepco's MYP 2, the Company seeks to create a regulatory asset for and earn a return on the costs of the Climate Solutions Programs. OPC contends – however – that Pepco has failed to explain how the proposed spending for these programs is extraordinary; nor has it stated that the programs will end after the three-year term of the MYP.[28] OPC also points out how Pepco's proposal to include the Climate Solutions Programs in rate base would conflict with provisions of Code of Maryland Regulations (COMAR) 20.07.04.08.[29]

3. Consideration of Pepco's proposed climate solutions programs in other Commission dockets.

First, OPC asserts that Pepco's Beneficial Electrification program is really an EmPOWER Maryland program that Pepco in fact included in its 2024-26 EmPOWER plan submitted in Case No. 9705, only without the cost recovery proposal included in this MYP

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[26] *Id*. at 24.
[27] *Id*.
[28] *Id*. at 25.
[29] *Id*. at 25-26.

2.[30] Further, OPC points out that the building programs within Pepco's Planning for Efficient Electrification portfolio were not included in Pepco's EmPOWER plan but are EmPOWER-type programs and that the Company intends to supplement projects incentivized through the Building Electrification program.[31] OPC argues that Pepco's approach to seek cost recovery of the Beneficial Electrification Program through the MYP 2 rather than the EmPOWER surcharge contravenes the Commission's directive in December 2022 for EmPOWER to be transitioned from a program in which costs are amortized over five-year periods, with utilities collecting carrying charges on the unamortized balance, to a program in which costs are fully expensed on an annual basis.[32] Thus, OPC asserts that Pepco is attempting to use the MYP 2 to circumvent the Commission's directive on how the cost of energy efficiency programs should be recovered.[33]

OPC argues that similar to BGE's electrification plan in Case No. 9692, the Commission should also reject Pepco's effort and reaffirm its conclusion that putting EmPOWER costs into the rate base would impose dramatic increases in rates for customers.[34] OPC argues further that Pepco's "proposal to embed the charges into base rates" would also go against the longstanding principle of providing transparency through the line-item surcharge on customer bills.[35]

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[30] *Id*. at 14.
[31] *Id*.
[32] *Id*. at 15.
[33] *Id*. at 16.
[34] *Id*.
[35] *Id*.

Second, OPC asserts that Pepco's Electrifying Transportation portfolio represents a significant new phase of the Company's current electric vehicle pilot program and should be considered in Case No. 9478, the Commission's EV pilot program docket.[36] OPC noted that Phase I of Pepco's EV Pilot program would end on December 31, 2023, even though the Commission authorized Pepco to continue building and operating its network of Pepco-owned EV chargers until the end of 2025.[37] Pepco is required to file its final EV program report by March 1, 2024 and the Commission will have a final review of all the Maryland electric utilities' EV pilot programs in May 2024.[38] OPC points out that in May 2023, BGE also submitted a Phase II EV Program in Case No. 9478 and subsequently included a request to recover the cost of the program in its Case No. 9692 – MYP 2. OPC argues that like BGE's Phase II EV Program, Pepco's submission of essentially a Phase II EV Program proposal and the associated cost recovery also belongs in Case No. 9478 and not its MYP 2.

Third, OPC claims that Pepco's fourth climate solutions program is a pilot program intended to investigate how smart inverters could better optimize solar photovoltaic (PV) interconnections to potentially prevent the need for distribution system upgrades.[39] OPC agrees that the pilot may be beneficial but thinks that the MYP 2 is the wrong forum for two reasons. *First*, OPC argues that "Pepco's proposal raises novel issues under the Commission's new smart inverter regulations that require more stakeholder and Commission attention than is reasonably available within the constrained time frame of a

[36] *Id*. at 17.
[37] *Id*. at 18.
[38] *Id*.
[39] *Id*. at 20.

rate case."[40] *Second*, OPC argues that "the design of the pilot program—which is in an early stage of development—could benefit from input from stakeholders that are not parties to this proceeding."[41] OPC argues that solar developers and distributed energy resource (DER) aggregators operating in Maryland who are not parties in this rate case would help ensure that the pilot is optimally designed to yield the maximum benefit for the proposed costs.[42] OPC proposes that this pilot be considered in PC44 or in a stand-alone docket, not in Pepco's MYP 2.[43]

B. <u>Pepco Opposition</u>

In response, Pepco opposes OPC's Motion but concedes to removing seven of the 12 programs from its MYP 2 case.[44] Specifically, "the Company agrees to remove seven of the twelve competitive service provider (CSP) programs: four programs in the Electrifying Transportation portfolio (Destination Charging Make-Ready, Public Transit Bus Charging Make-Ready, Multifamily Charging Make-Ready, and Private Fleet Charging programs), the entirety of the Decarbonizing Buildings portfolio consisting of the Beneficial Electrification program, and two programs in the Planning Efficient Electrification portfolio (Residential Buildings Make-Ready and Commercial Buildings Make-Ready programs), and proposes to move those to other dockets for further consideration.[45] Pepco argues that although it is removing most of the programs in the Electrifying Transportation portfolio, the Company disagrees with OPC's assertion in its

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[40] *Id*. at 21.
[41] *Id*. at 22.
[42] *Id*.
[43] *Id*.
[44] Pepco Opposition at 2.
[45] *Id*.

Motion that transportation electrification is a major policy decision because these programs have been considered at the Commission for years and the Company notes that OPC itself states in its December 15, 2023 testimony that Pepco's proposed make-ready programs "… generally align with the appropriate role for utilities in the EV marketplace…" and, if the motion to strike is not granted, recommends approval with revision for all but one program."[46]

Pepco requests that the Commission allow the following five programs to remain part of the Company's MYP 2 – components of the Planning Efficient Electrification portfolio – EV Make-Ready Planning and Support Services, Technical Advisory Services, and Beneficial Electrification Workforce Development; the Smart Inverter Pilot and the public charging stations operation and maintenance component of its Electrifying Transportation portfolio.[47] Pepco argues that the Electrifying Transportation, Smart Inverter Pilot and Planning Efficient Electrification Portfolios support state and local climate initiatives. Pepco highlights that its climate solutions programs go beyond implementing the CSNA and also advance certain county goals. Specifically, Pepco points out that "Prince George's Climate Action Plan recommends reducing all community-wide GHG emissions by 50% by 2030 and achieving carbon neutrality by 2050" among other measures.[48] Pepco also notes that in 2023 the Maryland General Assembly passed House Bill 834, which required certain uptime standards for EV charging networks.[49] Pepco argues that the Company's EV Smart Public Charging Stations Operations and

[46] *Id*.
[47] *Id*. at 2-3.
[48] *Id*. at 6.
[49] *Id*.

Maintenance program is designed to meet this law's standard of 97% uptime. Consequently, Pepco contends that "this program is not a new policy" instead it is an existing law with which the Company must comply, and that removal of it from the MYP 2 would hinder Pepco's ability to comply with the statutory mandate.[50]

Pepco counters OPC's argument that incorporating the Smart Inverter Pilot program into Pepco's MYP 2 will stifle broad stakeholder input into the design by pointing out that the program design was based on discussions from the Interconnection Working Group about how best to use smart inverters. Hence, Pepco argues that it has satisfied OPC's concern by creating a pilot program in line with Working Group stakeholders' input.[51] Pepco also appended to its filing a letter of support for the pilot from the Solar Energy Industries Association ("SEIA") and the Chesapeake Solar and Storage Association ("CHESSA") and noted that Commission Staff witness De Andre T. Wilson submitted testimony in this case recommending approval of the program.[52]

Regarding Pepco's Planning Efficient Electrification programs, Pepco acknowledged that certain of the programs could be considered in the other dockets, noting that the EV Make-Ready Planning and Support Services, Technical Advisory Services, and Beneficial Electrification Workforce Development programs are demonstrably different than the customer incentive programs that have been the focus of those dockets.[53] Pepco argues that these programs address an education barrier by providing larger customers with access to Pepco subject matter experts that can directly impact the decision-making and

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[50] Pepco Opposition at 6-7.
[51] *Id*. at 7.
[52] *Id*. at 8.
[53] *Id*.

therefore speed of customer adoption of electrification technologies and solutions.[54] Regarding the Beneficial Electrification Workforce Development, Pepco seeks to address the number of a qualified professionals that will be needed to support the transition from gas appliances to electric appliances by creating a network within local community colleges to train and build the workforce of Heating, Ventilation, and Air Conditioning (HVAC) professionals now to support future demand.[55] Pepco argues that is not an insignificant effort and that if the Commission decides not to keep this program within the MYP 2, then it requests that the Commission move this program to a separate docket for consideration.[56]

C. <u>Staff Response</u>

Staff supports OPC's Motion, stating that it "believes that electrification should be addressed at the policy level, in a generic proceeding, before individual utilities propose programs to pursue it."[57] Staff concurs with OPC's assessment that many of Pepco's proposals may be better suited as part of other active dockets of the Commission including EmPOWER Maryland (Case No. 9705) or Electric Vehicle (Case No. 9478) proceedings.[58] Staff notes further that in the recent BGE MYP case (Case No. 9692), the Staff recommended that the Commission also grant OPC's motion in that case.[59]

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[54] *Id*.
[55] *Id*. at 9.
[56] *Id*.
[57] Staff Response at 1.
[58] *Id*.
[59] *Id*.

D. MEA Response

In its response, MEA stated that "[g]iven the significance of achieving the State's climate goals in a cost-effective manner, and to provide a real opportunity to participate for interested stakeholders not currently involved in this proceeding, MEA would urge the Commission to consider the utilities' role in implementing the CSNA and meeting the State's climate goals in an independent and separate proceeding."[60] MEA argues that "[t]he complicated and hefty cost recovery issues in Pepco's (and BGE's) electrification programs deserve scrutiny similar to that of utilities' EmPOWER programs."[61] MEA stated that it agrees with OPC's assessment that Pepco's Electrifying Transportation portfolio is simply a "new phase" of the Company's EV program approved in Case No 9478, and should be considered there.[62] Like Staff, MEA also pointed out that the Commission granted a substantially similar motion to strike electrification programs proposed in BGE multi-year case, Case No. 9692.[63]

E. OPC Reply to Pepco's Opposition

In OPC's reply to Pepco's Opposition, OPC acknowledged Pepco's willingness to remove seven of the twelve programs from its Climate Solutions Portfolios. Nonetheless, OPC maintained its initial recommendation and again requested that the Commission strike all programs from consideration in Pepco's pending MYP 2 in Case No. 9702.[64]

OPC argues that Pepco relies on OPC direct expert testimony in the MYP 2 to show that consideration of the remaining five climate solutions programs is appropriate in this

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[60] MEA Response at 2.
[61] *Id*. at 2.
[62] *Id*.
[63] *Id*. at 1.
[64] OPC Reply at 1.

rate case. OPC points out that its witnesses made clear that the purpose of their testimonies was to provide analysis and recommendations that the Commission could consider "*if OPC's Motion to Strike was denied*."[65] Moreover, OPC argues that the fact it filed expert testimony regarding the substance of the programs does not indicate that OPC's witnesses believe that consideration of these matters is appropriate in the context of this rate case.[66] OPC also argues that beyond Pepco's reliance on OPC's direct testimony the Company provided no legal basis as to why consideration of the remaining five programs is appropriate in this rate case.[67]

Commission Decision

The Commission grants OPC's Motion to Strike. As stated in Order No. 90755, the Commission continues to agree that it is prudent and consistent with Commission precedent to consider major policy proposals in a separate docket rather than a base rate case where the parties and the Commission must address a myriad of issues in a compressed time frame.[68] For example, the Commission agrees with OPC that Pepco's Electrifying Transportation portfolio raises several important questions about the role utilities should play in the deployment and use of EV charging infrastructure. However, the MYP 2 does not provide a platform where these questions can be debated by all interested stakeholders—including state and local elected officials, EV industry stakeholders, and EV-driving utility customers—and thoroughly considered by the Commission.[69] The Commission created such a forum in Case No. 9478, where it first established a statewide

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[65] *Id*. at 2.
[66] *Id*.
[67] *Id*.
[68] Order No. 90755 at 9.
[69] OPC Motion at 20.

EV portfolio to incentivize the deployment of charging infrastructure through authorized EV Pilot programs.

On December 31, 2023, Pepco's Phase I of its EV pilot program ended, except for Commission authorization for Pepco to continue building and operating a network of Pepco-owned EV chargers until the end of 2025.[70] Like other Maryland utilities operating Commission-approved Phase I EV Pilot programs, Pepco must file its final EV program report by March 1, 2024 and the Commission will conduct a final review of all the Maryland electric utilities' EV pilot programs in a legislative-style hearing in May 2024.

On December 29, 2023, the Commission issued a Letter Order determining not to take any action on the remaining new programs proposed in BGE's EV Phase II Proposal until a full evaluation of all EV Programs from Phase I are completed and presented to the Commission in May 2024 and a further order has been issued.[71] Similarly, the Commission declines to take action within the Pepco MYP 2 on the new phase of its EV pilot packaged in its Electrifying Transportation portfolio until a full evaluation of all utilities' EV Phase I Pilot Programs are complete.

Although Pepco agrees to remove seven of the 12 programs from its Climate Solutions Portfolios, the Commission finds that the Company failed to address how rate-basing any of the remaining customer-side programs would harmonize with established ratemaking principles. Regarding customer-side equipment, the Commission agrees with OPC that Pepco's proposal raises significant public policy questions about the role of the utility and whether such a utility program would constitute unfair competition among non-

[70] *Id*. at 18.

[71] Order Regarding BGE's Electric Vehicle Program Phase II Proposal – (Case No. 9478) filed December 29, 2023.

utility market actors in electrification markets.[72] Given these policy concerns and the fact that Pepco has not shown that four of the five remaining programs would rise to the level of being "extraordinary" for purposes of establishing regulatory asset treatment, the Commission finds that the revised version of the Company's Climate Solutions Programs—with the exception of the Smart Inverter Pilot Program—also should not be considered as part of the MYP 2. Regarding the Smart Inverter Pilot Program, the Commission finds that Pepco's Reply addressed OPC's concerns preliminarily by discussing how the proposed program design was based on input from the Interconnection Work Group (PC44), showing industry support for the pilot via letter of support from SEIA and CHESSA, and pointing out that Staff's pre-filed testimony also recommends approval for the pilot. Therefore, for purposes of Pepco's MYP 2, the Commission will allow the Smart Inverter Pilot Program to be considered as a proposal but is not approving the program at this point.

The Commission appreciates Pepco's desire to advance electrification and put forth several programs aimed at helping the State meet its climate goals and commitments. However, the Commission finds that many of the proposed programs are better suited in other existing Commission dockets, such as Case No. 9478 for Electric Vehicles and the EmPOWER Plan in Case No. 9705. Therefore, with the exception of the Smart Inverter Pilot Program, the Commission grants OPC's Motion to Strike in this case without prejudice to Pepco's filing the same or amended Climate Solutions Programs in other related dockets or a generic policy docket. Additionally, nothing in this Order should be construed as denying Pepco's Climate Solutions Programs on the merits.

[72] See OPC Motion at 23.

IT IS THEREFORE, this 4th day of March in the year of Two Thousand Twenty-Four, by the Public Service Commission of Maryland, **ORDERED** that:

(1) with the exception of the Smart Inverter Pilot Program, the Office of People's Counsel's Motion to Strike Pepco's Proposed Climate Solutions Programs in this docket is granted without prejudice; and

(2) the Potomac Electric Power Company may file its Climate Solutions Programs in another docket in total or as amended in separate related dockets.

/s/ Frederick H. Hoover, Jr.

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Kumar P. Barve

/s/ Bonnie A. Suchman
Commissioners