

**ORDER NO. 89964**

Potomac Electric Power Company's  
Application for an Electric Multi-Year Rate  
Plan

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9655

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**ORDER DENYING REHEARING AND CLARIFICATION**

Before: Jason M. Stanek, Chairman  
Michael T. Richard, Commissioner  
Anthony J. O'Donnell, Commissioner  
Odogwu Obi Linton, Commissioner  
Mindy L. Herman, Commissioner

Issued: October 14, 2021

## **I. BACKGROUND**

1. On July 28, 2021, pursuant to the *Annotated Code of Maryland*, Public Utilities Article (“PUA”) § 3-114, and Code of Maryland Regulations (“COMAR”) 20.07.02.08, the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) filed an Application for Rehearing and Request for Clarification (“AOBA Request for Rehearing and Clarification”) of Order No. 89868, the Commission’s June 28, 2021 Order authorizing rates for Potomac Electric Power Company (“Pepco” or “Company”) pursuant to the Company’s Application For a Multi-Year Rate Plan (or “MRP”), (hereinafter “Order No. 89868” or “the Order”), which authorized Pepco to increase its electric distribution rates subject to conditions.<sup>1</sup>

2. A petition seeking to reverse or modify an order of the Commission shall allege the facts and circumstances which have arisen after the hearing or order which justify the reversal or modification; or the consequences resulting from compliance with the order which justify or entitle the applicant to the reversal or modification. COMAR 20.07.02.08D(2). For the reasons discussed below, AOBA’s Request for Rehearing and Clarification is denied.

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<sup>1</sup> Maillog No. 236336.

## **II. REQUEST FOR REHEARING**

### **A. Bill Impact on Commercial Customers**

#### *AOBA*

3. AOBA requests rehearing of the Commission's decisions regarding rate design, as it relates to bill impact calculations, long-term debt and capital expenditures. AOBA argues that the Commission's decisions are either not supported by the evidence presented or the Commission misconstrued the evidence. AOBA also requests that the Commission clarify its determination regarding matters related to Pepco's use of updated billing determinants during the term of the Company's approved MRP.

4. AOBA argues that Order No. 89868 does not render findings for Pepco's commercial customers regarding: (1) the reasonableness and appropriateness of the methods Pepco used to assess bill impacts; or (2) the magnitude of the bill increases that commercial customers (particularly those served under Rate Schedules MGT-LV and GT-LV) will experience under the rates approved by the Commission.<sup>2</sup> AOBA contends that the Commission addresses the bill impact that a typical residential customer will experience in each MRP rate year, but the Order is silent on the degree of magnitude or reasonableness of bill impacts for commercial rate classes. AOBA asserts that this alleged omission necessitates rehearing.<sup>3</sup>

#### *Pepco and Staff*

5. In its response, Pepco notes that the Commission's Order not only discussed in substantial detail Pepco's revenue requirements and proposed adjustments for pendency of

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<sup>2</sup> AOBA Request for Rehearing and Clarification at 4.

<sup>3</sup> *Id.*

the MRP but also analyzed the fair and appropriate allocation of the revenue requirement across all classes.<sup>4</sup> Pepco adds that the Commission adopted Staff’s recommendation to keep Pepco’s Bill Stabilization Adjustment (“BSA”) and limit Pepco’s Effective Bill Stabilization Adjustment (“EBSA”) to 10% of current rates, and specifically found that this decision “results in just and reasonable rates for all classes.”<sup>5</sup>

6. Pepco also cites a recent Commission decision where the Commission’s rationale can be “readily discerned, after reading the entire order,” even if the basis for the decision is not explained in detail, the order is not defective and does not necessitate rehearing.<sup>6</sup> Staff agrees with Pepco for the same reasons and objects to rehearing on this issue.

**B. EBSA**

AOBA

7. AOBA argues that the Commission’s Order did not address AOBA’s concerns regarding the reasonableness and appropriateness of the EBSA, or “imputed adjustments,” to charges at present rates in Pepco’s computations of bill impacts.<sup>7</sup>

Pepco

8. Pepco asserts that AOBA is rehashing its previous argument, made during the hearings and post-hearing briefing, regarding the EBSA, and the repeated argument does not merit rehearing.<sup>8</sup> However, Pepco argues the Commission did render a finding in the order regarding the reasonableness of the EBSA by adopting Pepco’s comparison of effective rates to the proposed 2021 rates and finding that the effective per-month bill

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<sup>4</sup> Pepco Opposition to AOBA Request for Rehearing and Request for Clarification at 5.

<sup>5</sup> See Order No. 89868 at 207.

<sup>6</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 4. See Case No. 9651 at 2.

<sup>7</sup> AOBA Request for Rehearing and Clarification at 7.

<sup>8</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 6.

impact for a typical residential customer was \$0 in 2021.<sup>9</sup> Pepco adds that this methodology is similar to Baltimore Gas and Electric Company's ("BGE") bill impacts as presented in its June 2021 compliance filing and Pepco's bill impacts as presented in its August 2021 compliance filing.<sup>10</sup>

*Staff*

9. Staff objects to rehearing on this issue, agreeing with Pepco's analysis and emphasizing that in Order No. 89868, paragraph 487, the Commission found the rates to be "just and reasonable for all classes."<sup>11</sup> Staff explains that the EBSA adjusts the MRP rates with the result that Pepco receives the same amount of revenue they would have absent this case via the BSA, and the EBSA rate changes adjust only the time frame for the revenue collection.<sup>12</sup>

**C. COVID-19-Related BSA Revenue Under-Recoveries**

*AOBA*

10. AOBA asserts that Order No. 89868 fails to address responsibility for BSA revenue under-recoveries during the COVID-19 pandemic, and the Order also fails to render a determination regarding revenue under-recoveries for commercial customers, resulting from governmentally imposed restrictions on business activities. AOBA recounts its previous arguments regarding COVID-19 restrictions resulting in a substantial decline in commercial customer electricity use and revenue collections, and an increase of residential

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<sup>9</sup> *Id.*

<sup>10</sup> *Id.* at 6-7.

<sup>11</sup> *See* Order No. 89868 at 207.

<sup>12</sup> *Id.*

customer electricity use and revenue collections.<sup>13</sup> AOBA again emphasizes its previous request that BSA COVID-19 revenue under-recoveries be spread across all classes and contends that the Commission did not address its arguments in its order.<sup>14</sup>

Pepco

11. Pepco responds that AOBA provided no legal authority that would require the Commission to consider socializing the BSA COVID-19 revenue under-recoveries across all customer classes.<sup>15</sup> Pepco additionally states that the Commission is not required to respond to every argument or request set forth in a case, and the rationale of the order as approved can be readily discerned upon reading the entire order.<sup>16</sup> Therefore, according to Pepco, since the Commission approved the BSA without modification, that decision and its explanation sufficiently addressed the BSA issue without necessitating an explanation of all issues raised.<sup>17</sup>

Staff

12. Staff also opposes rehearing on this issue, noting that the Commission has established a separate proceeding to address financial issues arising from the effect of the COVID-19 pandemic on Pepco's costs and revenues.<sup>18</sup> According to Staff, the Commission may elect to address COVID-19 related financial issues later in that separate proceeding – Case No. 9639 – in order to ensure consistency among the companies it

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<sup>13</sup> AOBA Request for Rehearing and Clarification at 10.

<sup>14</sup> *Id.*

<sup>15</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 7.

<sup>16</sup> *Id.* at 7-8.

<sup>17</sup> *Id.*

<sup>18</sup> See Order No. 89542 in Case No. 9639, *State of Emergency and Public Health Emergency in the State of Maryland Due to COVID-19*.

regulates.<sup>19</sup>

**D. Exclusion of Pepco's EBSA Adjustment to Revenues**

AOBA

13. AOBA contends that the Commission erred by accepting Staff witness Hoppock's testimony that excluding the EBSA would result in a decrease of Pepco's baseline revenue for the BSA rate classes, and higher revenue requirements.<sup>20</sup> AOBA argues that Mr. Hoppock's statement is erroneous, and Pepco's revenue requirement is not altered regardless of whether EBSA adjustments are included.<sup>21</sup>

Pepco

14. Pepco disagrees with AOBA's reasoning on this issue and asserts that AOBA is merely repeating its previous arguments regarding the EBSA.<sup>22</sup> Pepco reiterates that the repeated arguments do not necessitate or justify rehearing.<sup>23</sup>

Staff

15. Staff also objects and reiterates that the Commission found the rates from the EBSA just and reasonable for all classes. Staff notes that AOBA is using the phrase "revenue requirement" in a manner that is inconsistent with the Commission's use of the phrase in Order No. 89868, in that AOBA is referring to the *total* revenue requirement.<sup>24</sup> According to Staff, Order No. 89868 makes clear that the revenue requirement refers to the *incremental* revenue requirement, and Mr. Hoppock's testimony is consistent with the

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<sup>19</sup> Staff Response to AOBA Request for Rehearing and Clarification at 5.

<sup>20</sup> AOBA Request for Rehearing and Clarification at 11.

<sup>21</sup> *Id.*

<sup>22</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 8-9.

<sup>23</sup> *Id.*

<sup>24</sup> Staff Response to AOBA Request for Rehearing and Clarification at 6.

Commission's use of the term.<sup>25</sup>

**E. Fixed Rate for Pepco's Long-Term Debt**

AOBA

16. AOBA argues that the Commission erred in its determination of setting a fixed rate for Pepco's long-term debt for the three years of the MRP. First, AOBA asserts that the Commission "mistakenly applies the equity-related concepts of investor expectations to Pepco's long-term debt."<sup>26</sup> AOBA also states that the Commission fails to examine and address the relationship between "immediate term" bond yields and Pepco's embedded costs of long-term debt.<sup>27</sup> AOBA contends that had the Commission examined this issue further, "it could have only concluded that Pepco's costs of long-term debt for the three years of its MRP are not reasonably represented by the Company's historic average costs of long-term debt."<sup>28</sup>

17. AOBA notes that while nearly all of Pepco's MRP case is based on projected (or forecasted) costs including forecasted estimates of billing determinants, the Company's only measure to support long-term debt is its historic embedded costs of long-term debt.<sup>29</sup> AOBA dismisses as incorrect Pepco's witness O'Donnell's suggestion that the Commission had determined in Order No. 89482 that capital structure and "rate of return" should be established initially in MRP proceedings and maintained throughout the MRP period. On the contrary, AOBA points out that Order No 89482 found that "For the Pilot

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<sup>25</sup> *Id.*

<sup>26</sup> AOBA Request for Rehearing and Clarification at 13.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 13-14.



Utility the ROE and capital structure will be set for the duration of the Pilot MRP.”<sup>30</sup>

18. Second, AOBA contends that its witness Timothy Oliver demonstrated a clear and persistent downward trend in Pepco’s long-term debt.<sup>31</sup> AOBA notes that witness Oliver explained that “the identified downward trend was a product of Pepco’s comparatively high weighted average costs of long-term debt.”<sup>32</sup> AOBA also pointed out that its Initial Brief showed that Pepco’s historic average cost of long-term debt is 104 basis points higher than the historic cost of long-term debt presented by BGE in Case No. 9645. Consequently, AOBA asserts that Pepco has greater opportunity to lower its average costs of debt during the MRP than was available to BGE in Case No. 9645. However, AOBA argues that instead the Commission elected “to give inappropriate weight to the non-quantitative assertions of Pepco’s witness McKenzie regarding ‘investor expectations’ regarding unqualified impacts of recent and projected increases in interest rates.”<sup>33</sup> AOBA argues that the interest rates presented by witness McKenzie do not support his assertions regarding the validity of AOBA’s long-term debt cost projections.<sup>34</sup> Further AOBA notes that witness McKenzie, while critical of its projections of long-term debt costs, offers no comparable analysis or projections of Pepco’s cost of long term debt for each of the years of the Company’s MRP. In fact, AOBA contends that Pepco’s embedded cost of long-term debt at 4.82% remains well-above the market rates for long-term debt. AOBA points out that Pepco’s own expectations of its cost of new long-term debt issuances during the

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<sup>30</sup> *Id.* at 14.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 15.

<sup>34</sup> *Id.*

period of its MRP has estimated interest rates ranging from 3.40% to 3.50%.<sup>35</sup> AOBA witness Oliver’s analysis demonstrated that based on Pepco’s own expected costs for new long-term debt issuances, the Company’s weighted average costs of long-term debt would fall to an overall weighted average of 4.34%. Therefore, AOBA argues that Pepco’s “average costs of long-term debt during the MRP will necessarily decline.”<sup>36</sup>

Pepco

19. Pepco argues that AOBA’s complaints regarding the long-term debt costs “are simply an attempt to relitigate the same arguments that [it] previously raised,<sup>37</sup> which the Commission fully considered and rejected in its MYP Order.”<sup>38</sup> First, Pepco refutes AOBA’s assertion that the Commission applied “equity-related concepts” of investor expectations to Pepco’s costs of long-term debt. Pepco points out that “the investor expectations that the Commission refers to are specific to the question of rising interest over the 2021-2024 period. As such the Commission is not applying equity-related concepts to long-term debt, as AOBA contends.”<sup>39</sup> Pepco argues that AOBA is dressing up previous arguments and that is not a ground for rehearing.

20. Second, Pepco discusses how AOBA rehashes its argument that Pepco’s embedded long-term debt interest rates should not be fixed throughout the MYP Period.<sup>40</sup> Pepco notes that AOBA was the only party in the case to disagree with a fixed cost of debt over the MYP Period. Pepco points out AOBA’s erroneous interpretation of Commission Order

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<sup>35</sup> *Id.* at 16-17.

<sup>36</sup> *Id.* at 17.

<sup>37</sup> AOBA Initial Brief at 21-24; AOBA Reply Brief at 13-17.

<sup>38</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 9.

<sup>39</sup> *Id.* at 10.

<sup>40</sup> *Id.* at 11.

No. 89678 regarding a company's capital structure, rate of return, and cost of debt being established at the beginning of an MYP period and maintained throughout fixed long-term debt. Specifically, Pepco notes that Commission Order No. 89678 "rejected BGE's proposal for a cost of debt true-up and found that a fixed cost of debt without a true-up strikes the appropriate balance."<sup>41</sup>

21. Third, Pepco contends that AOBA's argument that the Commission erred by rejecting its "unrefuted" and "well-documented" analysis demonstrating a downward trend in Pepco's long-term debt costs is another rehash of a previous argument made by AOBA and rejected by the Commission. Pepco argues that AOBA "raises no new evidence that the Commission did not fully consider or identify errors of law or fact."<sup>42</sup> As pointed out in Pepco's Opposition to AOBA's Application for Rehearing and Request for Clarification, Pepco witness Elizabeth O'Donnell explained that AOBA witness Oliver's "estimated cost of debt ignores the possibility that the Company's debt maturities during the MYP could be replaced with debt at a higher coupon rate."<sup>43</sup> Pepco further explained that "the weighted average cost of debt is the compilation of the various individual bonds in the debt portfolio, and it is important to understand how changes in the specific debt issuances within the portfolio change the weighted average cost of debt; it is not the case that the weighted average cost of debt issuances is lower than the current weighted average cost of the portfolio."<sup>44</sup> Pepco points out that AOBA makes reference to its response to Staff Data Request ("DR") 5-1 as evidence to support its argument that interest rates on

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<sup>41</sup> *Id.* at 11, n. 34; citing Case No. 9645, *In the Matter of Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan*, Order No. 89678 slip op. 155, para. 347 (Dec. 16, 2020).

<sup>42</sup> Pepco Opposition to ABOA Request for Rehearing and Clarification at 11.

<sup>43</sup> *Id.* at 12.

<sup>44</sup> *Id.*

new debt issuances are lower than the weighted average cost of debt.<sup>45</sup> But upon further examination, Pepco notes that “If the three maturities are factored in along with the new debt \$1.65B bond issuance referenced in the Staff DR 5-1, the weighted average cost of the debt portfolio would remain about the same – the cost changes from the current 4.82% to 4.62% ....”<sup>46</sup> Finally, Pepco asserts that to achieve AOBA’s recommended 4.21% weighted average cost of debt in Rate Year 3, the interest rate on the new \$1.65B of debt would have to be significantly lower than the 3.4% - 3.5% rate in the response to Staff DR 5-1.

22. Pepco contends that the issue is not that the Commission failed to give due consideration, but rather that AOBA’s logic is flawed. Pepco maintains that the Commission thoroughly explained and analyzed the parties’ positions on capital structure, including long-term debt and expressly explained its reasoning for rejecting AOBA’s recommendations.

Staff

23. Staff notes that AOBA disagrees with the Commission’s determination of a fixed cost of debt for Pepco’s rate calculations during the MRP period versus varying it as recommended by AOBA. Further, Staff notes that the Commission’s Order “considered AOBA’s arguments but simply did not adopt AOBA’s position.”<sup>47</sup> Staff states that “In the absence of a legal requirement, this is not a basis for granting a rehearing on this issue.”<sup>48</sup> Staff also notes that setting the cost of debt at the start of the MRP effective period was

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<sup>45</sup> *Id.*

<sup>46</sup> *Id.*

<sup>47</sup> Staff Response to AOBA Request for Rehearing and Clarification at 7.

<sup>48</sup> *Id.*

done in Case No. 9645, the BGE MRP proceeding, so the Order in the Pepco proceeding is consistent with this precedent.<sup>49</sup>

**F. Pepco’s MRP Status as a “Second Pilot”**

*AOBA*

24. AOBA argues that the Commission incorrectly asserts that Pepco’s MRP application was submitted by Pepco as the second pilot utility. According to AOBA, it was unclear that Pepco’s application was to be categorized as a pilot MRP until a Pepco witness was questioned during the hearing, and Pepco could not have aligned its application with the Commission’s BGE MRP decision, which was not issued at the time Pepco’s application was filed.<sup>50</sup> AOBA argues that the Commission’s decision deprives parties of due process by denying an opportunity to litigate “pilot MRP issues.”<sup>51</sup>

*Pepco and Staff*

25. Pepco objects to rehearing on this issue and responds that AOBA’s arguments are irrelevant to the Commission’s determination of the issues in this case, and AOBA is again repeating previous arguments.<sup>52</sup> Staff also objects to rehearing on this issue, stating that it does not meet the standard of COMAR 20.07.02.08D(2)(b) in that it does not generate an issue for reconsideration, as it does not allege adverse “consequences resulting from compliance with the decision, order, or requirement which justify or entitle the applicant to reversal or modification.”

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<sup>49</sup> *Id.*

<sup>50</sup> AOBA Request for Rehearing and Clarification at 25.

<sup>51</sup> *Id.*

<sup>52</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 15.

### **Commission Decisions**

26. The Commission rejects AOBA's assertion that Order No. 89868 does not render necessary findings regarding the justness and reasonableness of bill impacts for commercial customers and will not grant rehearing for this reason. Order No. 89868 is not deficient in its findings as they relate to any classes, as the Commission did not exclude any classes in its finding that the rates were just and reasonable. A reasoning mind can determine that the order, when read in its entirety, applies to all classes. Additionally, AOBA did not provide any evidence of factual or legal error in the Commission's findings – the absence of a finding that AOBA deems necessary does not equate to an omission that requires rehearing.

27. The Commission also rejects AOBA's assertion that the Commission's approval of rates for Pepco are deficient because they lack a determination regarding the reasonableness and appropriateness of Pepco's "imputed adjustments" to charges at present rates in Pepco's computation of bill impacts. Contrary to AOBA's assertion, the Commission made a just and reasonable finding in approving the EBSA, which is the "imputed adjustment" to which AOBA refers. AOBA has not proven that Order No. 89868 contains factual and legal errors, and AOBA's assertion that the Order lacks AOBA's preferred specificity does not equate to error that necessitates rehearing.

28. The Commission rejects AOBA's assertion that the Commission failed to render a determination regarding responsibility for BSA revenue under-recoveries during the COVID-19 pandemic and for revenue under-recoveries for commercial customers resulting from business activity restrictions. The Commission agrees with Pepco that one can easily discern from reading the entire Order that the Commission sufficiently addressed the BSA.

Moreover, the Commission retains the option to address COVID-19-related financial issues related to Pepco in Case No. 9639, if needed.

29. The Commission also rejects AOBA's assertion that by accepting Staff witness Hoppock's testimony that excluding the EBSA would result in a decrease of Pepco's baseline revenue for the BSA rate classes and higher revenue requirements. The Commission noted in its Order that the record in this case raised "serious questions regarding the need, role and structure of the BSA in a forward-looking rate proposal," and noted further that "the Commission expects utilities to fully support the need for a BSA that will be effective during the rate-effective period, or remove the BSA altogether."<sup>53</sup> However, AOBA has not shown in its Request for Rehearing and Clarification that Order No. 89868 contains either factual or legal error regarding its acceptance of Pepco's BSA and Staff's 10 percent limitation to the Company's EBSA in this case. Therefore, AOBA's request for rehearing is denied.

30. Regarding AOBA's assertion that the Commission mistakenly applies equity-related concepts of investor expectations, Commission Order No. 89482 examined both the testimony put forth by AOBA witness Oliver as well as Pepco witness McKenzie, who in his Rebuttal testimony noted that AOBA's position regarding a continued downward trend of long-term cost of debt "contradicts the expectations of widely recognized forecasting services, which uniformly anticipate that bond yields will increase over the intermediate term."<sup>54</sup> Consequently, the Commission's decision does not misuse equity-related concepts; rather, as stated in the Order, AOBA's analysis seeking to establish a lower cost

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<sup>53</sup> Order No. 89868 at 207, para. 488. In approving the EBSA, the Commission limited the EBSA to 10 percent of Pepco's current rates, as recommended by Staff.

<sup>54</sup> Order No. 89868 at 154, para. 358.

of debt for Pepco failed to “address the expectations of investors who anticipate increasing bond yields in the intermediate term or the continuation of decreasing past bond yield performance.”<sup>55</sup>

31. Next, the Commission’s determination to set a long-term debt cost at the beginning of the effective MRP period was based on the record and consistent with its BGE MRP proceeding notwithstanding AOBA’s analysis and recommendations to the contrary. The Commission fully considered the evidence raised by all parties. As pointed out in Pepco’s Opposition to AOBA’s Application for Rehearing and Request for Clarification, Pepco witness O’Donnell explained that AOBA witness Oliver’s “estimated cost of debt ignores the possibility that the Company’s debt maturities during the MYP could be replaced with debt at a higher coupon rate.”<sup>56</sup> Further Pepco explained that “it is not the case that the weighted average cost of debt will be lower simply because the interest rates on new debt issuances is lower than the current weighted average cost of the portfolio.”<sup>57</sup> Additionally, Commission Order No. 89868 noted that witness McKenzie also testified to the false assumptions embedded in AOBA witness Oliver’s recommendation, which was based on linear regression analysis of Pepco’s cost of long-term debt in past rate cases since 2012. Specifically, Mr. McKenzie stated that the “notion that the future course of debt maturities and interest rates can be estimated based on a mere extrapolation of recent trends is simplistic and highly suspect.”<sup>58</sup>

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<sup>55</sup> Order No. 89868 at 157-158, para. 371.

<sup>56</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 12.

<sup>57</sup> *Id.*

<sup>58</sup> Order No. 89868 at 154, para. 358.



32. The Commission's Order reflects a thorough review of the record and an examination of the positions of all of the parties on capital structure, rate of return and long-term debt. The Commission finds that AOBA is simply rehashing the same arguments without providing any additional facts or circumstances that would warrant a reversal or modification. Therefore, rehearing on the issue of long-term debt is denied.

33. The Commission rejects AOBA's assertion that the Commission failed to address the substantial incongruity between the Company's growth in capital expenditures and its projected growth in sales and numbers of customers. PUA § 4-101 defines "just and reasonable rate" as a rate that:

- (1) does not violate any provision of this article;
- (2) fully considers and is consistent with the public good; and
- (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.

34. Further, PUA § 4-102 states, in pertinent part:

- (b) The Commission shall have the power to set a just and reasonable rate of a public service company, as a maximum rate, minimum rate or both.
- (c)(1) The Commission shall issue an order, including the rate set under subsection (b) of this section.
  - (2) The Commission shall serve the order on each affected public service company.

35. In Order No. 89868, the Commission exercised its authority to set just and reasonable rates after careful consideration of the entire record. The Commission notes

that under the PUA there is no statutory or regulatory requirement that specifically requires the consideration of capital expenditures and customer growth and usage.

36. AOBA's filing only makes a single reference to Order No. 89868 wherein the Commission noted Pepco's responsibility to determine how much it needs to spend and how best to spend to meet its obligations to provide safe and reliable service. AOBA failed to specify which capital expenditures should be reduced, but it was likely referring to the Corrective Maintenance, the 69 kV Feeder Rebuild Program, and the Substations as these are higher-cost projects/programs.

37. As Pepco notes, not all of its capital expenditures are tied to customer growth, but some are required to ensure the continued delivery of safe and reliable service to ratepayers. In its Order, the Commission acknowledged the Corrective Maintenance Program's costs have increased, but found the "work to be non-discretionary."<sup>59</sup> In other words, this work must be completed regardless of Pepco's projected growth in sales and customers.

38. In relation to the 69 kV Feeder Rebuild Program, the Commission specifically limited recovery for the projects that were already underway and specified that the continued investment in the program would be evaluated during a future case.<sup>60</sup> By accepting Staff's position of removing \$56.361 million, the burden will be on the Company to determine whether the program should continue and to demonstrate the prudence of its decision if it elects to proceed with the 69 kV Feeder Rebuild Program.<sup>61</sup> Similarly, the Commission permitted recovery of costs already incurred for the substations,

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<sup>59</sup> Order No. 89868 at 77, para. 188.

<sup>60</sup> *Id.* at 85, para. 205.

<sup>61</sup> *Id.* at 86, para. 206.

but did not pre-approve recovery of future recovery based upon load forecasting concerns, consideration of alternatives, and cost-benefit considerations, some of the same issues noted by AOBA.<sup>62</sup>

39. It is important to recognize that costs associated with the 69 kV Feeder Rebuild Program and the substations that have not been incurred will not be recovered by Pepco during the MRP. Rather, Pepco will need to demonstrate the prudence of these projects at a later date. While the Commission has not previously disallowed capital projects for imprudence, MRPs have changed the regulatory landscape.<sup>63</sup> As such, the Commission must be prepared to disallow recovery of costs deemed imprudent, especially in cases where the utility has been put on notice about the Commission's concerns about the justifications for specific capital expenditures.

40. Finally, the Commission disagrees with AOBA's claim that "Revenue Offsets" were a "gimmick."<sup>64</sup> The Revenue Offsets utilized by the Commission in this case and in Case No. 9645 were tax refunds and other adjustments, Tax Cuts and Jobs Act EDIT ("Excess Deferred Income Taxes") and MASM ("Maryland Additional Subtraction Modification") funds, to which customers were entitled and the mere fact that they were used to offset the increase in the first year of the MRP does not make it a "gimmick," as AOBA contends. Rather, the Commission views the decision to accelerate the return of those funds to ratepayers as both prudent and necessary to establish just and reasonable rates. As the Commission noted, the practice of utilizing offsets may continue in Years 2

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<sup>62</sup> *Id.* at 94, para. 227. The Commission's concerns regarding Pepco's forecasting challenges were also emphasized in Chairman Stanek's Concurring Statement.

<sup>63</sup> *Id.* at 86, para. 206.

<sup>64</sup> *See* AOBA Request for Rehearing and Clarification at 22.

and 3 depending “upon the Commission’s evaluation of the state of the economy, the status of the COVID-19 pandemic recovery, and Pepco’s proposed work plans ....”<sup>65</sup> The Commission will continue to utilize any and all avenues to ensure Pepco’s and all Maryland’s utilities’ rates remain just and reasonable. Accordingly, AOBA’s request for rehearing on this issue is denied.

### **III. Request for Clarification**

#### AOBA

41. AOBA requests that the Commission render a specific determination regarding Pepco’s use of updated billing determinants during the approved MRP. Specifically, AOBA requests that the Commission clarify if the billing determinants that it has accepted as reasonable for the rate determinations should remain unaltered during the period of the MRP.<sup>66</sup>

#### Pepco

42. Pepco objects to AOBA’s request for clarification, denying that it proposed to adjust or intends to adjust the billing determinants.<sup>67</sup> Pepco explains that AOBA apparently misunderstood the tariff language pertaining to billing determinants for Rider ERR in its July 9, 2021 Compliance Filing. Pepco states that the rider’s rate is calculated for each Rate Schedule and calculated as the difference in revenue before the MRP “allocated increase, adjusted for billing determinant changes for Rate Schedules subject to

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<sup>65</sup> Order No. 89868 at 58, para. 142.

<sup>66</sup> AOBA Request for Rehearing and Clarification at 26.

<sup>67</sup> Pepco Opposition to AOBA Request for Rehearing and Clarification at 16.

Rider ‘BSA,’ and the revenue after the [MRP] allocated increase for each Rate Year.”<sup>68</sup> Pepco explains further that the tariff language means that Pepco calculates Rider ERR rates consistent with the Order No. 89868 directives and that the rates will continue to be adjusted for the BSA forecast.<sup>69</sup> Pepco adds that AOBA also appears to presume that the billing determinants accepted by the Commission are those in Staff witness Hoppock’s Exhibit DH-4, which accompanied his direct testimony.<sup>70</sup> Pepco notes, however, that the billing determinants were further revised in witness Hoppock’s surrebuttal testimony, and the final billing determinants in Order No. 89868 are those presented in Exhibit DH-6-SR.<sup>71</sup>

*Staff*

43. Staff does not object to AOBA’s request for clarification by the Commission, based upon evidence in the record, regarding this issue to resolve AOBA’s concerns.<sup>72</sup>

**Commission Decision**

44. The Commission finds that the clarification Pepco provided in its response is sufficient, and therefore the Commission adopts Pepco’s clarification in this Order. Accordingly, AOBA’s request for clarification is denied.

**IT IS THEREFORE**, this 14<sup>th</sup> day of October, in the year Two Thousand Twenty One, by the Public Service Commission of Maryland,

**ORDERED:** (1) That the Apartment and Office Building Association of

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<sup>68</sup> *Id.* at 17.

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Staff Response to AOBA Request for Rehearing and Clarification at 10.

Metropolitan Washington's Request for Rehearing of the Commission's June 28, 2021 Order No. 89868 is denied; and

(2) That the Request for Clarification of the Apartment and Office Building Association of Metropolitan Washington is denied.

*/s/ Jason M. Stanek* \_\_\_\_\_

*/s/ Michael T. Richard* \_\_\_\_\_

*/s/ Anthony J. O'Donnell* \_\_\_\_\_

*/s/ Odogwu Obi Linton* \_\_\_\_\_

*/s/ Mindy L. Herman* \_\_\_\_\_

Commissioners