

**PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1325 G STREET N.W., SUITE 800
WASHINGTON, D.C. 20005**

ORDER

February 9, 2016

**FORMAL CASE NO. 1119, IN THE MATTER OF THE JOINT APPLICATION
OF EXELON CORPORATION, PEPCO HOLDINGS, INC., POTOMAC
ELECTRIC POWER COMPANY, EXELON ENERGY DELIVERY COMPANY,
LLC AND NEW SPECIAL PURPOSE ENTITY, LLC FOR AUTHORIZATION
AND APPROVAL OF PROPOSED MERGER TRANSACTION, Order No. 18105**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) directs the Potomac Electric Power Company (“Pepco” or “Company”) to deposit \$36,000 into the Treasury of the District of Columbia to the credit of the account, “Office of the People’s Counsel Agency Fund,” by February 19, 2016. The funds are needed by the Office of the People’s Counsel (“OPC” or “Office”) to meet expenses incurred by OPC in carrying out its statutory mandate to represent ratepayers in *Formal Case No. 1119*.

II. BACKGROUND

2. On January 29, 2016, OPC filed a Notice of Agency Fund Requirements (“NOAFR” or “Notice”) in *Formal Case No. 1119*.¹ In this NOAFR, OPC seeks to retain legal consultants to continue to assist the Office in preparing post-hearing briefs and other related motions in this formal case. The Office notified the Commission of the need for an Order directing Pepco to deposit \$36,000 into the Treasury of the District of Columbia, to the credit of the fiduciary account known as the “Office of the People’s Counsel Agency Fund” to meet expenses incurred by OPC in carrying out its statutory mandate to represent ratepayers in *Formal Case No. 1119*. OPC’s filing indicates that the Office delivered a copy of the proposed Notice and a proposed Commission Order to the Pepco attorney designated for service in this proceeding.² The record reflects that no objection or opposition was filed to the Notice.³

¹ *Formal Case No. 1119, In the Matter of the Joint Application of Exelon Corporation, Pepco Holdings, Inc., Potomac Electric Power Company, Exelon Energy Delivery Company, LLC and New Special Purpose Entity, LLC for Authorization and Approval of Proposed Merger Transaction (“Formal Case No. 1119”), Notice of Agency Fund Requirements (“NOAFR”), filed January 29, 2016.*

² *See Formal Case No. 1119, NOAFR, Letter from Naunihal S. Gumer, Agency Administrator, to Peter E. Meier, Esq., Pepco Executive Vice-President, Legal Services, dated January 29, 2016.*

³ *See Formal Case No. 1119, NOAFR.*

III. OPC REQUIREMENTS

3. According to OPC, in order for the Office to represent ratepayers before the Commission in *Formal Case No. 1119*, it requires the continued legal services of Duncan, Weinberg, Genzer & Pembroke, P.C. (“DWGP”) and McCarter & English, LLC (“M&E”).

A. Duncan, Weinberg, Genzer & Pembroke, P.C.

4. OPC states that DWGP has over 40 years of experience addressing traditional and restructured era utility issues. OPC states that DWGP has previously provided legal assistance to OPC in *Formal Case Nos. 1087* and *1103*. OPC states that DWPG will provide continued legal assistance to the Office in drafting post-hearing briefs and any other related motions in this formal case.

5. OPC currently has a contract with DWGP and is seeking \$10,000 for a contract amendment, raising the contract ceiling from \$379,000 to \$389,000, with out-of-pocket expenses to be specifically accounted. OPC represents that all other provisions of the original contract remain, which provided compensation at the hourly rates of \$385 for Jeff Genzer and Eli Eilbott; \$365 for Jason Gray; and \$285 for Natalie Karas and Greg Jones. The original contract provides that Jason Gray is the primary contractor.

B. McCarter & English, LLC

6. OPC states that M&E is a law firm with over 400 attorneys and offices in Boston, Hartford, Stamford, New York, Philadelphia, Wilmington, and Washington, D.C. OPC states that the firm provides professional services to more than 400 government and consumer-oriented clients located in 40 or more states and the District of Columbia in the areas of energy, litigation, construction and infrastructure, and business and finance. OPC states that M&E has assisted it on many matters involving the District of Columbia’s major investor-owned utilities, including the representation of OPC in both Washington Gas Light Company’s (“WGL”) and Pepco’s most recent rate cases, such as *Formal Case Nos. 1093* and *1054* for WGL, and *Formal Case Nos. 1076, 1087, and 1103* for Pepco. OPC adds that the firm has also represented the Office in the Verizon Washington, DC Inc. rate proceeding, *Formal Case No. 1057*. OPC asserts that M&E is familiar with OPC’s role in Commission proceedings and in the litigation of matters before the Commission. OPC states that M&E will continue its assistance of the Office in the drafting of the Office’s Initial and Reply post-hearing briefs in this formal case.

7. OPC currently has a contract with M&E and is seeking \$26,000 for a contract amendment, raising the contract ceiling from \$222,360 to \$248,360, with out-of-pocket expenses to be specifically accounted. OPC represents that all other provisions in the original contract remain, which provided compensation at the hourly rates of \$405 for John Adragna; \$300 for Jeffrey Janicke; \$295 for Kevin Conoscenti; and \$110 for Joanna Hurt. The original contract provides that John Adragna is the primary contractor.

IV. APPLICABLE LAW

8. The Commission has reviewed the information submitted by OPC in support of this Notice. As required by 15 DCMR § 1405.2, the Commission finds that OPC has:

- (1) Provided the total amount sought from the utility and the date on which payment is requested to be made by the utility;
- (2) Identified the contractors hired;
- (3) Described the qualifications of the contractors;
- (4) Described the work performed by the contractors;
- (5) Identified the number of persons to be employed by the contractors;
- (6) Provided the rate of compensation on an hourly basis for each person employed by the contractors; and
- (7) Provided the contract ceiling for the contracts and contract amendments.⁴

9. The Commission is also required to determine whether OPC's Notice is consistent with the relevant statutory authority. D.C. Code § 34-912(a)(3) provides that "[i]n any valuation or rate case, neither the Commission nor the Office may individually seek special franchise tax deposits of more than one-quarter of one percent of the jurisdictional valuation of the [company] which is the subject of the proceeding."⁵ This same section also provides that "the Office [may not] individually seek special franchise tax deposits in any one year of more than one-twentieth of one percent of the jurisdictional valuation of each [company] which is the subject of one or more investigations during that year."⁶ The Commission's most recent determination of the Company's District of Columbia jurisdictional valuation is \$1,333,479,000.⁷ Calculation of this jurisdictional valuation against the "one-quarter of one percent" and the "one-twentieth of one percent" limitations set out in D.C. Code § 34-912(a)(3) yields a maximum individual rate case assessment of \$3,333,698. Non-rate case investigations are limited to a maximum assessment amount of \$666,740 per year. The Commission

⁴ 15 DCMR § 1405.2 (1986).

⁵ D.C. Official Code § 34-912(a)(3) (2001).

⁶ *Id.*

⁷ See *Formal Case No. 1103, 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*, Order No. 17424, issued March 26, 2014.

has determined that *Formal Case No. 1119* is an “other investigation” or non-rate case proceeding. Thus far in calendar year 2016, OPC has not assessed Pepco in other investigations or non-rate case proceedings. Accordingly, OPC’s Agency Fund Requirements of \$36,000 will not cause the Office to exceed its statutory millage limit.

V. CONCLUSION

10. In conclusion, the Commission finds this Notice of Agency Fund Requirements is:

- (1) Not opposed by any party;
- (2) Consistent with the statutory authority of and rules issued by the Office;
- (3) Supported by findings, which findings are sustained by substantial evidence in the record submitted with the Notice; and
- (4) Within the limitations enumerated in D.C. Code § 34-912(a)(3).

THEREFORE, IT IS ORDERED THAT:

11. The Potomac Electric Power Company is directed to deposit \$36,000 into the Treasury of the District of Columbia, to the credit of the account known as the “Office of the People’s Counsel Agency Fund,” by February 19, 2016.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**