

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

ORDER

September 24, 2020

**FORMAL CASE NO. 1156, IN THE MATTER OF THE APPLICATION OF POTOMAC
ELECTRIC POWER COMPANY FOR AUTHORITY TO IMPLEMENT A MULTIYEAR
RATE PLAN FOR ELECTRIC DISTRIBUTION SERVICE IN THE DISTRICT OF
COLUMBIA, Order No. 20632**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) denies the Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”), the Apartment & Office Building Association of Metropolitan Washington (“AOBA”), the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Washington Construction and Public Employees Laborers’ District Council, the Maryland DC Virginia Solar Energy Industries Association, and the Small Business Utility Advocates (collectively, “Joint Movants”), Joint Protest of the Potomac Electric Power Company’s (“Pepco” or “Company”) July 31, 2020, Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco’s Rate Case Application, and for Additional Relief.¹ Our denial of this Motion is not a decision on the merits of the application but rather a procedural order that will facilitate a final decision on Pepco’s Multiyear Rate Plan (“MRP”) Application.

II. BACKGROUND

2. On May 30, 2019, Pepco filed an Application requesting authority to increase rates and charges for electric service through the implementation of an MRP for its electric distribution service in the District of Columbia (“District”) for the years 2020 through 2022 (“Application”).² On April 8, 2020, and June 1, 2020, Pepco filed witness Blazunas’s Rebuttal Testimony, Surrebuttal Testimony, exhibits for the MRP, and an alternative Enhanced Multiyear Rate Plan

¹ *Formal Case No. 1156, In the Matter of the Application of Potomac Electric Power Company for Authority to Implement a Multiyear Rate Plan for Electric Distribution Service in the District of Columbia (“Formal Case No. 1156”)*, Office of the People’s Counsel for the District of Columbia, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Washington Construction and Public Employees Laborers’ District Council, the Maryland DC Virginia Solar Energy Industries Association, and the Small Business Utility Advocates Protest of Pepco’s July 31, 2020 Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco’s Rate Case Application, and for Additional Relief, filed August 11, 2020 (“Joint Motion”).

² *Formal Case No. 1156, Application of the Potomac Electric Power Company to Implement a Multi-Year Rate Plan for Electric Distribution Service in the District of Columbia*, filed May 30, 2019.

(“EMRP”).³ On July 28, 2020, Pepco filed an Errata to its previously filed Rebuttal Testimony.⁴ On July 31, 2020, Pepco filed a Motion to File Supplemental Testimony regarding the Company’s July 28, 2020, Rebuttal Errata, accompanied with Supplemental Testimony and exhibits of Company Witnesses Wolverton, Blazunas, and Schafer.⁵ On August 11, 2020, the Joint Movants’ filed a petition in response to Pepco’s Motion to reject Pepco’s July 31, 2020, Motion to File Supplemental Testimony, and a motion to dismiss Pepco’s MRP Enhanced Proposal and direct Pepco to withdraw its entire application. The Joint Movants request further that the Commission suspend the procedural schedule pending a decision on the Joint Motion.⁶ The District of Columbia Government (“DCG”) and International Brotherhood of Electrical Workers, Local Union 1900 (“IBEW”) filed letters in support of the relief requested in the Joint Motion.⁷ On August 18, 2020, Pepco filed a response to Joint Movants’ Motion.⁸ On August 19, 2020, OPC filed a request for leave to reply and reply to Pepco’s Response.⁹ On August 20, 2020, DCG filed a letter in support of OPC’s Reply.¹⁰ On August 21, 2020, the Commission issued Order No. 20617, accepting Pepco’s Supplemental Testimony and holding in abeyance the Joint Motion filed

³ *Formal Case No. 1156*, Potomac Electric Power Company’s Rebuttal Testimony, filed April 8, 2020; *Formal Case No. 1156*, the Potomac Electric Power Company’s Surrebuttal Testimony, filed June 1, 2020.

⁴ *Formal Case No. 1156*, the Potomac Electric Power Company’s Errata to Rebuttal Testimony, filed July 28, 2020 (“Errata”).

⁵ *Formal Case No. 1156*, Motion of Potomac Electric Power Company to File Supplemental Testimony Regarding the Company’s July 28, 2020, Errata, filed July 31, 2020 (“Pepco’s Motion”).

⁶ Joint Motion.

⁷ *Formal Case No. 1156*, the District of Columbia Government’s Letter in Support of the Relief Requested by the Office of the People’s Counsel for the District of Columbia, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, the District of Columbia Water and Sewer Authority, Baltimore Washington Construction and Public Employees Laborers’ District Council, the Maryland DC Virginia Solar Energy Industries Association, and the Small Business Utility Advocates Protest of Pepco’s July 31, 2020 Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco’s Rate Case Application, and for Additional Relief, filed August 12, 2020 (“DCG Letter”); and *Formal Case No. 1156*, International Brotherhood of Electrical Workers, Local 1900’s Letter of Support for the Joint Protest of Pepco’s July 31, 2020 Motion to File Supplemental Testimony and Joint Motion to Dismiss MRP Enhanced Proposal, to Direct Withdrawal of Pepco’s Rate Case Application and for Additional Relief, filed August 13, 2020 (“IBEW Letter”).

⁸ *Formal Case No. 1156*, Response of Potomac Electric Power Company in Opposition to the Joint Protest and Joint Motion to Dismiss, filed August 18, 2020 (“Pepco’s Response”).

⁹ *Formal Case No. 1156*, Office of the People’s Counsel for the District of Columbia’s Reply to the Potomac Electric Power Company’s Response to Joint Protest and Motion to Dismiss (“OPC’s Reply”), filed August 19, 2020. OPC filed the reply on behalf of itself, the Apartment & Office Building Association of Metropolitan Washington, the General Services Administration, and the Baltimore Washington Construction and Public Employees Laborers’ District Council.

¹⁰ *Formal Case No. 1156*, District of Columbia Government’s Letter in Support for the August 19, 2020, Letter from the Office of the People’s Counsel in Reply to the Potomac Electric Power Company’s Response filed on August 20, 2020 (“DCG Letter 2”).

in response to Pepco's Motion and directing Pepco to convene a virtual Technical Conference.¹¹ On September 4, 2020, OPC filed a request for clarification of certain procedural aspects of the Technical Conference.¹² On September 8, 2020, AOBA filed a letter in support of the OPC Clarification Letter.¹³ On September 10, 2020, Pepco convened the Technical Conference.¹⁴ On September 15, 2020, OPC and AOBA each filed separate Responses regarding the Technical Conference.¹⁵

III. DISCUSSION

3. By Order No. 20617, the Commission held the Joint Movants' Motion to Dismiss Pepco's entire rate application in abeyance and accepted for filing Pepco's Supplemental Testimony and exhibits of Witnesses Wolverton, Blazunas, and Schafer regarding the Company's Rebuttal Errata.¹⁶ In its July 31, 2020, Motion, Pepco asserted that the Supplemental Testimony and exhibits provide additional information explaining the correction to the forecasted demand billing determinants that were used to design rates for commercial classes in the MRP and EMRP.¹⁷ According to Pepco, the Supplemental Testimony has a limited impact and only affects the rate design for commercial classes that have demand rate components.¹⁸ Pepco proposed that, if necessary, the Parties should be given additional time to conduct discovery regarding the Supplemental Testimony and to submit additional testimony.¹⁹

4. The Joint Movants argue that Pepco's Errata filing and Motion to file Supplemental Testimony is prejudicial to the Parties²⁰ because Pepco's original application changed on June 1, 2020, when the Company filed Surrebuttal Testimony which added the EMRP to the case.²¹ Joint

¹¹ *Formal Case No. 1156*, Order No. 20617, rel. August 21, 2020 ("Order No. 20617").

¹² *Formal Case No. 1156*, OPC Letter Requesting Clarification re Technical Conference, filed September 4, 2020 ("OPC Clarification Letter").

¹³ *Formal Case No. 1156*, AOBA Letter in Support of OPC's Request, filed September 8, 2020 ("AOBA Letter").

¹⁴ On September 14, 2020, Pepco filed a copy of the September 10, 2020 Technical Conference presentation.

¹⁵ *Formal Case No. 1156*, Office of the People's Counsel's Response to the September 10 Technical Conference and Renewal of the Joint Motion to Dismiss Pepco's MRP Enhanced Proposal, to Direct Withdrawal of Pepco's Rate Case Application, and for Additional Relief, filed September 15, 2020 ("OPC's Response"); *Formal Case No. 1156*, AOBA Response to the September 11, 2020, Pepco Errata Technical Conference, filed September 15, 2020 ("AOBA's Response").

¹⁶ Order No. 20617.

¹⁷ Pepco's Motion at 1.

¹⁸ Pepco's Motion at 2.

¹⁹ Pepco's Motion at 2- 3.

²⁰ Joint Motion at 24.

²¹ Joint Motion at 5.

Movants assert that Pepco's data errors and last-minute corrections to the forecasted billing determinants affect the MRP and EMRP and came at a point in the procedural schedule where the Joint Movants have no opportunity to respond. Joint Movants contend that allowing the Supplemental Testimony essentially shifts the burden to the ratepayers to determine the contours of the Application.²² Joint Movants argue that because of Pepco's numerous changes to date, Joint Movants are concerned that Pepco's revised schedules put forward in its proposed Supplemental Rebuttal Testimony do not identify or reflect all of the conforming changes to components of the Company's rate filing.²³ Joint Movants maintain that "it is unclear whether calculation errors in one class could impact the reconciliations that Pepco has proposed to recover from all classes as part of its MRP."²⁴

5. Joint Movants request that the Commission: (1) reject Pepco's July 31, 2020, additional supplemental testimony as untimely and prejudicial; (2) dismiss Pepco's EMRP as not in accordance with D.C. law and the Commission's rules; and (3) direct Pepco to withdraw its rate case in its entirety because the Company's public characterization of the case and underlying support proffered by the Company is unreliable, misleading, and prejudicial to the Parties' due process rights. In the alternative, Joint Movants request that the Commission, among other things: (1) suspend the procedural schedule and allow three (3) months for the Parties to conduct discovery and to convene a technical conference on Pepco's July 28th Errata filing; (2) direct Commission Staff and the Parties to convene a technical conference to review and determine what impact Pepco's Errata filing has on both the case and the already-completed discovery; and (3) hold a status conference at the end of the three (3) month period to determine how best to proceed.²⁵

6. DCG states in support of the Joint Movants' Motion that Pepco has failed to satisfy its burden to provide a credible, supported proposal that meets the Commission's standards for approval of an Alternative Form of Ratemaking. DCG adds that Pepco's repeated and substantial amendments to its proposals produced an incurably muddled record that cannot viably support Pepco's Application.²⁶ DCG agrees with the Joint Movants in requesting that the Commission reject Pepco's July 31, 2020, additional supplemental testimony; dismiss Pepco's EMRP Proposal; and direct Pepco to withdraw its Rate Case Application.²⁷ Similarly, IBEW's filing supports the Joint Movants' Motion.²⁸

7. In response, Pepco states that the Joint Movants' Motion should be denied because the Motion is baseless and unsubstantiated, and is a regurgitation of previous motions that the

²² Joint Motion at 9-10, 24-26.

²³ Joint Motion at 10, 27-29.

²⁴ Joint Motion at 11, 32-34.

²⁵ Joint Motion at 38-39.

²⁶ DCG Letter at 1.

²⁷ DCG Letter at 1.

²⁸ IBEW Letter at 1.

Commission has denied.²⁹ Pepco argues that the Errata filed on July 28, 2020, and additional supplemental testimony filed on July 31, 2020, provides detailed information and work papers which demonstrate the limited scope and impact of the correction on the forecasted demand billing determinants.³⁰ Specifically, Pepco argues that the Company's Supplemental Testimonies of Company Witnesses Wolverton, Schafer, and Blazunas and in the response to Staff DR 24-24, all indicate "that the impact of the correction to the forecasted demand billing determinants on the Company's Original MRP and MRP Enhanced Proposals is limited in scope and impact to commercial classes with demand rate components. All other rate classes, according to Pepco, including Residential (R), Master Metered Apartments (MMA), General Service – Non-Demand (GS-ND), Temporary (T), Rapid Transit (RT), Service Street Lights Overhead and Underground (SSL-OH and SSL-UG), Street Lighting Service Energy (SL-E), Traffic Signal Service (TS), Telecommunications Network Service (TN), and LED Outdoor Lighting Service (OL LED), remain unaffected by this change."³¹

8. Pepco states that it would be arbitrary and capricious to terminate this proceeding, that it is in the public interest to move forward and proceed to a hearing and decision on the merits of the Company's application because "the MRP [and EMRP] structure provides the flexibility for Pepco to continue to make the necessary investments in the critical infrastructure that powers the District's hospitals and healthcare facilities, supports essential businesses, and serves all customers safely during this emergency as well as to provide relief to customers."³² In addition, because the Parties have been litigating this proceeding for over 15 months a robust record has been amassed.³³ Pepco asserts that it is contrary to law that the Company be required to pay the costs of litigation of the Parties, other than the Commission's and OPC's costs.³⁴ In addition, Pepco maintains that the Commission should reject the request to convene a "Task Force" to address the negative impact of the COVID-19 pandemic since the Commission opened *Formal Case No. 1164* to address the impact of the COVID-19 crisis on public utilities.³⁵

9. Lastly, Pepco argues that starting another MRP proceeding would be fruitless and inefficient and that this matter has been pending since May 2019 and all that is left are the hearings and briefings.³⁶ Pepco proposes continuing this proceeding and provides a procedural schedule including a technical conference, additional discovery, and hearing starting September 28, 2020.

²⁹ Pepco's Response at 2, 4.

³⁰ Pepco's Response at 2, 13-19.

³¹ Pepco's Response at 15-16.

³² Pepco's Response at 7.

³³ Pepco's Response at 8.

³⁴ Pepco's Response at 31.

³⁵ Pepco's Response at 32-33.

³⁶ Pepco's Response at 33.

10. On August 19, 2020, OPC on behalf of the Joint Movants, filed leave to reply contending Pepco has made inaccurate assertions and misleading claims which need to be clarified.³⁷ OPC states that contrary to Pepco's claim, the Office is not seeking summary judgment but is requesting that the Commission dismiss Pepco's EMRP and direct Pepco to withdraw the rate case entirely.³⁸ OPC states that Pepco's proposed procedural schedule is unworkable and equates to a denial of due process and that: (1) it may need to procure additional resources before it can review the Errata; (2) the Parties have pre-existing professional and personal commitments over the next few weeks; and (3) the proposed hearing dates fall on religious holidays that impact several counsel and experts in the case.³⁹ OPC concludes that the Parties' due process rights should not be abrogated in pursuit of concluding the case by a specific date, that Pepco's schedule should be rejected, and, alternatively, a status conference should be convened before setting the remainder of the schedule.⁴⁰

11. DCG states in a second letter to the Commission that Pepco has mischaracterized the relief sought in the Joint Movants' Motion. DCG asserts that the relief sought in the Joint Motion is what it had previously stated in its earlier filing.⁴¹ DCG contends that it has not been dilatory in not issuing additional discovery on Pepco's errata filings because it was legally constrained from doing so, and adds that the procedural schedule proposed by Pepco in its Response is unworkable.⁴²

12. In a letter filing on September 4, 2020, OPC requests clarification on whether the technical conference will be transcribed.⁴³ OPC also requests that Pepco's materials from the technical conference be provided to all Parties and Commission staff by September 8, 2020, to allow Parties time to review the materials prior to the meeting.⁴⁴ AOBA supports OPC's request for clarification.⁴⁵ AOBA also argues for additional process, stating that to allow Pepco to correct its rate application at this point without the Commission permitting additional process would be unfair and prejudicial to the opposing Parties.⁴⁶

³⁷ OPC's Reply at 1.

³⁸ OPC's Reply at 2.

³⁹ OPC's Reply at 5-6.

⁴⁰ OPC's Reply at 7.

⁴¹ DCG Letter 2 at 1.

⁴² DCG Letter 2 at 2.

⁴³ OPC Clarification Letter at 1.

⁴⁴ OPC Clarification Letter at 2.

⁴⁵ AOBA Letter at 1.

⁴⁶ AOBA Letter at 2.

13. In OPC's Technical Conference filing, OPC asserts that the Technical Conference reinforced their concerns raised in the Joint Motion and that the Office continues to pursue the relief requested in the Joint Motion.⁴⁷ Further, OPC notes that the discussion points in Pepco's presentation center on the source of the error, the impact on Bill Stabilization Adjustment deferral balances and the MRP rate design.⁴⁸ OPC renews its arguments in the Joint Motion and states that the Technical Conference did not resolve OPC's concerns.⁴⁹ Specifically, OPC contends that Pepco's mistakes, errors and miscalculations are unacceptable and no further ratepayer resources should be spent on a case that is fatally flawed.⁵⁰

14. OPC continues to maintain that: (1) Pepco's EMRP should be dismissed because Pepco failed to follow the requirements for alternative ratemaking proposals; and (2) Pepco should be required to withdraw the entire rate case because Pepco failed to present reasonable and accurate information and has misled the Commission, the Parties, and the public.⁵¹ OPC asserts that the Commission has yet to address Pepco's failure to follow the filing requirements for alternative ratemaking and that Order No. 20617 was silent on that issue.⁵²

15. Alternatively, OPC states that additional procedural processes are needed if this case moves forward.⁵³ Because of the protracted litigation and the resources already expended, OPC requests that: (1) OPC and the Intervenor Parties be allowed to present oral surrebuttal testimony at the commencement of the hearing to address the errata filing; (2) outside of OPC and intervenor testimony, no other testimony be offered on the stand; and (3) OPC and intervenor oral testimony be followed by the regular hearing schedule.⁵⁴ Lastly, OPC states that given the complexity of this case and the potential for severe impact on ratepayers, the Commission should maintain the 8 weeks for drafting briefs and 15 days for filing reply briefs as opposed to the shortened briefing period noted in Order No. 20375.⁵⁵ OPC requests that the Commission make it clear to Pepco that the Company's brief should address the Parties' concerns raised in the testimony and that failure to address the Parties' concerns in its brief will result in the Company being barred from raising those points in its reply.⁵⁶ OPC maintains that the Commission should

⁴⁷ OPC's Response at 1-2.

⁴⁸ OPC's Response at 3-4.

⁴⁹ OPC's Response at 6-8.

⁵⁰ OPC's Response at 8.

⁵¹ OPC's Response at 8-9.

⁵² OPC's Response at 8-9.

⁵³ OPC's Response at 9.

⁵⁴ OPC's Response at 9-10.

⁵⁵ OPC's Response at 10.

⁵⁶ OPC's Response at 10.

not tolerate Pepco sandbagging the Parties by filing a brief that only summarizes Pepco's case and fails to address the Parties' concerns raised through testimony.⁵⁷

16. AOBA's response to the Technical Conference states, among other things, that the revisions to the billing determinants are not updates, but reflect a change in the methods and assumptions Pepco proposes to employ to estimate future billing demand determinants for demand-metered rate classes and is inconsistent with the methods Pepco utilized in *Formal Case Nos. 1139 and 1150*.⁵⁸ AOBA asserts that they have no confidence in the revised billing determinants estimates and that the changes represent a change to Pepco's load factor assumptions.⁵⁹ AOBA further argues that Pepco provides no data, analyses, or rationale to support its presumptions for estimating future demand billing determinants.⁶⁰ AOBA takes issue with Pepco's claim that a rate freeze is a customer benefit of the EMRP and reiterates that Pepco has misrepresented that the revenue offsets are a rate freeze since certain customers like the GT-LV customers would have a 76% increase in Rate Year 1 with no offsetting decreases.⁶¹

17. In addition, AOBA objects to Pepco's filing of the Company's Technical Conference presentation since it is repetitive of the information contained in the Errata Supplemental Testimony.⁶² AOBA raises several other concerns: (1) AOBA contends that it was denied an opportunity to make a presentation at the Technical Conference; and (2) the information contained on page 56 of Pepco's Technical Conference presentation references AOBA's response to a DR without providing AOBA's detailed customer bill impact analyses and related findings.⁶³ AOBA also renewed its support for the Joint Motion and the requested relief filed on August 11, 2020.⁶⁴ Lastly, AOBA argues that if the Commission is to consider the EMRP as revised, the Parties should be granted an opportunity to submit responsive testimony and cross-examine Pepco's witnesses on this new information relative to prior filings in this case.⁶⁵

IV. DECISION

18. The Joint Movants request that the Commission: (1) reject Pepco's July 31, 2020, additional supplemental testimony as untimely and prejudicial; (2) dismiss Pepco's EMRP as not in accordance with D.C. law and the Commission's rules; and (3) direct Pepco to withdraw its rate

⁵⁷ OPC's Response at 10-11.

⁵⁸ AOBA's Response at 1-2.

⁵⁹ AOBA's Response at 2.

⁶⁰ AOBA's Response at 2.

⁶¹ AOBA's Response at 3, 5.

⁶² AOBA's Response at 4.

⁶³ AOBA's Response at 4-5.

⁶⁴ AOBA's Response at 4-5.

⁶⁵ AOBA's Response at 6.

case in its entirety because the Company's public characterization of the case and underlying support proffered by the Company is unreliable, misleading, and prejudicial to the Parties' due process rights. In the alternative, Joint Movants request that the Commission, among other things: (1) suspend the procedural schedule and allow three (3) months for the Parties to conduct discovery and to convene a technical conference on Pepco's July 28th Errata filing; (2) direct Commission Staff and the Parties to convene a technical conference to review and determine what impact Pepco's Errata filing has on both the case and the already-completed discovery; and (3) hold a status conference at the end of the three (3) month period to determine how best to proceed.⁶⁶ DCG and IBEW support the Joint Movants' Motion.⁶⁷

19. The Joint Movants request that we dismiss Pepco's EMRP pursuant to D.C. Superior Court Rule of Civil Procedure 41(b)(1)(A), which states:

In General. If the plaintiff fails to prosecute or to comply with these rules or a court order: (i) a defendant may move to dismiss the action or any claim against it; or (ii) the court may, on its own initiative, enter an order dismissing the action or any claim.

A motion to dismiss under Rule 41, unlike a Motion for Summary Judgment under D.C. Superior Court Rule of Civil Procedure 56, is essentially a sanction rather than a decision on the merits of the case. Although circuits have developed different standards for reviewing a motion to dismiss, certain factors are routinely considered. They include whether the conduct was willful or in bad faith; whether the plaintiff received a warning; and whether an adjudication on the merits is in the public interest.⁶⁸

20. We do not believe that rejecting Pepco's July 31, 2020, additional supplemental testimony, dismissing Pepco's EMRP, or directing Pepco to withdraw its rate case in its entirety is warranted for the following reasons. First, there has been considerable litigation in this case. Dismissing Pepco's EMRP, rejecting Pepco's July 31, 2020, additional supplemental testimony, and/or directing Pepco to withdraw its rate case in its entirety would be a tremendous waste of resources. Indeed, if the Commission did grant the Joint Movants' request, it would not be with prejudice, and Pepco would in all likelihood refile a variation of the same application, at additional ratepayer expense. A better course of action is to proceed to decide this matter on the merits sooner than later.

21. Second, Order No. 20273 that Pepco is accused of failing to comply with sets out "principles" and guidelines" rather than bright-line requirements. In our view, the Order does not reasonably place Pepco on notice that its case can be dismissed for failure to address the principles and guidelines in a particular manner or to the satisfaction of the opposing Parties. Moreover, we have not previously warned Pepco that its responses to Commission Orders are approaching a

⁶⁶ Joint Motion at 38-39.

⁶⁷ See DCG Letter at 1. See also, IBEW Letter at 1.

⁶⁸ See e.g., *Ball v. City of Chicago*, 2 F.3d 752, 759-60 (7th Cir. 1993); *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 867-68 (3d Cir. 1984); *Harding v. Fed. Reserve Bank of N.Y.C.*, 707 F.2d 46, 50 (2d Cir. 1983).

point of warranting a sanction. It is certainly not beyond the bounds of reason that Pepco believes that it was being responsive to the Commission's Order.

22. Therefore, we deny the Joint Movants' requests. However, our ruling on the Joint Motion should not be deemed a ruling that Pepco's MRP or EMRP warrants approval. We will reserve judgment on that question until we have had a chance to determine whether there are any issues that warrant either an evidentiary or legislative-style hearing and considered the record that is before us. The Parties are directed to file a Joint List of Material Issues of Fact In Dispute on October 16, 2020, which should: (a) identify with specificity material issues of disputed facts; (b) set forth the Parties' stipulations; (c) indicate the number of witnesses as well as the nature of their testimony in the Joint Witness Cross Examination Matrix; (d) provide admissions; (e) authenticate documents; and (f) address any other procedural matters. The Commission will subsequently rule whether it will convene an evidentiary hearing to address material issues of facts in dispute. If, on the other hand, the only disputes concern inferences to be drawn that are issues of policy or law, the Commission may decide to convene a formal legislative-style hearing when warranted by the circumstances.

23. Both Pepco and the Joint Movants have indicated that if the Commission allowed Pepco's Supplemental Rebuttal Testimony and Exhibits, the Joint Movants should be provided with an opportunity for discovery on the filing. We agree. Because, by Order No. 20617, the Commission accepted the Supplemental Rebuttal Testimony and Exhibits into the record, to ensure due process to the Joint Movants and other Parties, we will allow the Parties a further opportunity to probe Pepco's errata filing and proffer an assessment on the Supplemental Rebuttal Testimony and Exhibits' impact on Pepco's rate Application.⁶⁹

24. However, we deny OPC's request that OPC and Parties be allowed to present oral surrebuttal testimony at the commencement of the hearing to address the errata filing because it is not yet clear whether the errata represents genuine issues of material fact to be addressed at an evidentiary hearing on the record before us. As has been the case throughout this proceeding, the Parties should engage in discovery to obtain whatever information they believe they need. A hearing is not the forum for conducting discovery. The schedule provides five (5) business days for issuing additional data requests. Responses to those data requests should be provided within three (3) business days of receipt of the request. In any event, we believe any testimony that OPC would like to proffer on Pepco's errata should be addressed in the October 9, 2020, supplemental filing, instead of an oral presentation at a hearing. If additional testimony is necessary, the testimony shall be filed no later than October 9, 2020, with any responsive testimony from Pepco to be filed no later than October 14, 2020.

⁶⁹ *Formal Case No. 989, In the Matter of the Office of the People's Counsel's Complaint for a Commission-Ordered Investigation Into the Reasonableness of Washington Gas Light Company's Existing Rate; and In the Matter of the Application of Washington Gas Light Company, District of Columbia Division, for Authority to Increase Existing Rates and Charges for Gas Service ("Formal Case No. 989")*, Order No. 13466, ¶¶ 9-10, rel. December 29, 2004 (allowing discovery on Rebuttal Testimony may help to develop a more complete record); *see also, Formal Case No. 989*, Order No. 13578, ¶¶ 2-3, rel. May 11, 2005 (additional discovery should contribute to the development of a comprehensive and complete record).

25. Similarly, we believe that AOBA's contention that Pepco's "revisions to the billing determinants are not updates but reflect a change in the methods and assumptions Pepco proposes to employ to estimate future billing demand determinants for demand-metered rate classes" and that "the revised billing determinants estimates and changes represent a change to Pepco's load factor assumptions" are issues that should be addressed in AOBA's October 9, 2020, supplemental filing.⁷⁰

26. The Commission has attached an amended procedural schedule allowing for additional discovery and testimony on Pepco's July 28, 2020, Errata. As noted, the proposed briefing schedule maintains the 4-week drafting schedule we adopted in Order No. 20375 that we believe is appropriate for the complexity of this proceeding.

THEREFORE, IT IS ORDERED THAT:

27. The Office of the People's Counsel for the District of Columbia's Request for Leave to Reply to the Potomac Electric Power Company's Response to Joint Protest and Motion to Dismiss is **GRANTED**; and

28. The Office of the People's Counsel for the District of Columbia and Intervenors' Motion to Dismiss the Enhanced Multiyear Rate Plan Proposal and to Direct Withdrawal of the Potomac Electric Power Company's Rate Case Application is **DENIED**.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

⁷⁰ AOBA is free to address its other contention that Pepco has misrepresented that the revenue offsets are a rate freeze for GT-LV customers, or alternatively that Pepco's contention that commercial class revenue requirements will not change as a result of the errata in its new supplemental testimony.

Attachment A: Procedural Schedule

<u>Action</u>	<u>Date</u>
Virtual Community Hearings (Date & Locations)	September 29, 2020
Limited Discovery on Pepco July 28th Supplemental Testimony and Exhibits only	September 24, 2020
Discovery Ends	October 1, 2020
OPC/ Intervenors Parties file Supplemental Testimony on Pepco's July 28th Errata & Supplemental testimony	October 9, 2020
Pepco's Responsive Testimony	October 14, 2020
Prehearing Statement on Material Issues in Dispute and Joint Witness Cross Examination Matrix	October 16, 2020
Order on Material Issue	October 21, 2020
Hearings Dates	October 26-30, 2020
Post-Hearing Brief	November 27, 2020
Reply Brief	December 18, 2020⁷¹

⁷¹ In Order No. 20273, the Commission indicated that any MRP that is adopted should be accompanied by performance incentive mechanisms ("PIMS") See Order No. 20273, ¶¶ 101-106. As previously noted, Parties and interested persons have until the close of the record (December 18, 2020) to submit any proposed PIMS for our consideration.