Office of the People's Counsel
District of Columbia

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August 18, 2011

VIA ELECTRONIC FILING
Jesse P. Clay, Jr.
Acting Commission Secretary
Public Service Commission
of the District of Columbia
1333 H Street, N.W.
Second Floor West Tower
Washington, D.C. 20005

Re: **Formal Case No. 1087, In the Matter of the Application of Potomac Electric Power Company For Authority To Increase Existing Retail Rates and Charges For Electric Distribution Service**

Re: Motion to Dismiss

Dear Mr. Clay:

Enclosed for filing in the above-referenced proceeding are an original and three (3) copies of the Office of the People's Counsel's Motion to Dismiss Pepco's Application for a Rate Increase.

If there are any questions regarding this matter, please contact me at (202) 727-3071.

Sincerely,

Laurence C. Daniels
Assistant People's Counsel

Enclosure

cc: Parties of record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF THE DISTRICT OF COLUMBIA

In the Matter of	§	
	§	
The Application of the	§	**Formal Case No. 1087**
Potomac Electric Power Company	§	
For Authority to Increase Existing	§	
Retail Rates and Changes for	§	
Electric Distribution Service	§	

MOTION OF
THE OFFICE OF THE PEOPLE'SCOUNSEL
TO DISMISS
PEPCO'S APPLICATION FOR A RATE INCREASE

I. INTRODUCTION

On July 8, 2011, the Potomac Electric Power Company ("Pepco" or "the Company") applied for authority to increase its District of Columbia electric distribution rates with the District of Columbia Public Service Commission ("Commission" or "PSC").[1] Pepco also asked the Commission to "approve ... in principle"[2] a Reliability Investment Recovery Mechanism ("RIM") tracker.[3]

For the reasons set forth below, the Office of People's Counsel ("OPC" or "the Office"), the statutory representative of the District of Columbia ratepayers in utility proceedings,[4] asks the Commission to dismiss Pepco's application in its entirety.[5]

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1 Formal Case No. 1087, *In the Matter of the Application of Potomac Electric Power Company for authority to Increase Existing Rates and Charges for Electric Distribution Service*, Application of Potomac Electric Power Company (July 8, 2011) ("Pepco Application"), at 1.

2 *Id.*, Exhibit Pepco (I), Direct Testimony William M. Gausman, at 33.

3 *Id.* at 31; Pepco Application at 6.

4 D.C. Code § 34-804 (2010).

5 OPC files this motion to dismiss pursuant to Rule 105.8 of the Rules of Practice and Procedure of

Dismissal is appropriate because Pepco has failed to fulfill the statutorily mandated predicate for an increase in rates: the provision of safe, reliable, and adequate service.

II. SUMMARY OF OPC'S POSITION

The time has come for the Commission to hold Pepco accountable for its poor quality distribution service to District of Columbia consumers. Few things touch the daily lives of 21st Century consumers more than persistent, prolonged, and often unexplained electrical service outages. The Office has consistently advocated that Pepco must invest substantially more than it has in recent years to ensure the reliability of electric service to its D.C. ratepayers. We are now exactly where we predicted we would be without Commission action. The pivotal question is: - who should be financially accountable? The Office submits the District's ratepayers should not be required to reward a company that has provided service so subpar that in terms of service quality the company ranks in the lowest quartile when compared to its peers. It is no wonder that Pepco recently earned the dubious distinction of being named the "most hated company in America."[6]

OPC has questioned Pepco's service adequacy consistently in numerous Commission proceedings since 2005. Sadly, the Office's concerns now have been validated by: the findings of this Commission,[7] the findings of this Commission's staff,[8]

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the District of Columbia Public Service Commission, 15 D.C.M.R. § 105.8.

6 Gus Lubin & Vivian Giang, "The 19 Most Hated Companies in America," Business Insider (June 29, 2011).

7 Formal Case No. 766, Order No. 16427, ¶ 2, p. 2.

8 Formal Case No. 766, Staff Report on the Potomac Electric Power Company's 2011 Consolidated Report: Productivity Improvement Plan, Comprehensive Plan, Manhole Event Report.

the findings of an independent investigative report;[9] Pepco's own admission and the extensive record developed in proceedings before the Maryland Public Service Commission ("Maryland PSC").[10]

The investments necessary to enable Pepco to provide adequate, reliable service will include not just the expenditure of funds but, crucially, an investment of management attention and focus — attributes that until very recently have been sorely missing. Deferring consideration of any rate increase until after Pepco has demonstrated concrete progress toward improving its inadequate service should aid in securing that focus.

It is important to note that, while Pepco operated under a negotiated rate cap from 2000 to 2007,[11] the deterioration of its service since 1998 did not result from rates that were too low to attract capital. To the contrary, between 2000 and 2007, Pepco consistently paid millions of dollars in dividends to the shareholders of its parent company, Pepco Holdings Inc. ("PHI"),[12] whose market capitalization more than doubled

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9 Evaluation of the Reliability and Quality of the Electric Distribution System of Potomac Electric Power Company, Final Report, Prepared by First Quartile Consulting and Silverpoint Consulting LLC, Maryland Public Service Commission Case No. 9240 (Mar. 2, 2011) ("First Quartile Report")(available at http://webapp.psc.state.md.us/Intranet/Casenum/NewIndex3_VOpenFile.cfm?filepath=C:\Casenum\9200-9299\9240\Item_44\\FirstQuartile-Silverpoint-PepcoInvestigationFinalReport.pdf); *See also* Montgomery County, MD Initial Brief & Reply Brief, (July 20, 2011 & August 8, 2011, respectively) and Montgomery County Maryland Pepco Work Group Final Report, April 20, 2011.

10 Evaluation of the Reliability and Quality of the Electric Distribution System of Potomac Electric Power Company, Final Report, Prepared by First Quartile Consulting and Silverpoint Consulting LLC, Maryland Public Service Commission Case No. 9240 (Mar. 2, 2011) ("First Quartile Report")(available at http://webapp.psc.state.md.us/Intranet/Casenum/NewIndex3_VOpenFile.cfm?filepath=C:\Casenum\9200-9299\9240\Item_44\\FirstQuartile-Silverpoint-PepcoInvestigationFinalReport.pdf); *see also* Montgomery County, MD Initial Brief & Reply Brief, (July 20, 2011 & August 8, 2011, respectively) and Montgomery County Maryland Pepco Work Group Final Report, April 20, 2011.

11 Pepco agreed to the rate freeze in Formal Case No. 945. *See*, Formal Case No. 945, Order No. 11576, rel. Dec. 30, 1999.

12 Since 2003, PHI has paid dividends every year equaling or exceeding $1.00 per share. From 2008 through 2010, those dividends amounted to more than $220 million per year. Pepco Holdings, Inc. Proxy Statement and 2010 Annual Report to Shareholders, at B-45 (Mar. 31, 2011) (PHI 2010 Proxy Statement)

during the same period.[13] Instead, the deterioration of Pepco's service quality apparently resulted from the twin failings of insufficient managerial attention and a decision to pay shareholder dividends instead of investing in needed maintenance and infrastructure improvements.[14] These two failings should not be the ushers that hold the Commission's doors open for Pepco to request yet another rate increase without an improvement in service.

Indeed, Pepco's failure to provide the District's ratepayers with adequate, reliable service undermines the factual and equitable bases for its rate request. As discussed more fully below, the regulatory *quid pro quo* requires ratepayers to afford investors an opportunity to realize a reasonable return on their investment *provided that* the Company provides ratepayers with safe, reliable, and adequate service.

OPC submits if the Commission allows this rate case to go forward while Pepco continues to deliver substandard service, the public will view the PSC as co-signing Pepco's attempt to address its alleged "under-earning" without demonstrating that the

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(available at http://goo.gl/NvpDT). As PHI observed, "PHI, on a stand-alone basis, generates no operating income of its own. Accordingly, its ability to pay dividends to its shareholders depends on dividends received from its subsidiaries." *Id.* at B-124. On January 27, PHI's Board declared a quarterly dividend on common stock of 27 cents per share (a rate of $1.08 per share per year) payable on March 10, 2011. *Id.* at B-145. During that period, PHI has had more than 170 million shares of common stock outstanding. *See* http://www.wolframalpha.com/input/?i=Pepco+common+stock+shares+outstanding+2003+to+2008.

13 PHI's market capitalization was $2.72 billion as of January 1, 2000. By January 1, 2008, it had soared to $5.93 billion. *See* http://www.wolframalpha.com/input/?i=Pepco+Holdings+market+capitalization+1998+to+2008.

14 For example, although Pepco frequently blames the District's foliage for the Company's reliability problems, *See*, Formal Case No. 766 & 991, 2011 Consolidated Report (February 28, 2011), the reality is that many of Pepco's feeders are underground, which means that equipment failure—not fallen tree limbs—is responsible for the majority of non-storm-related outages. As recounted in Commission Staff's comments on Pepco's 2011 Consolidated Report, equipment failure due to deterioration far exceeds all other causes of customer outages in the District. *See,* Formal Case No. 766 & 991, Staff Report on the Potomac Electric Power Company's 2011 Consolidated Report: Productivity Improvement Plan, Comprehensive Plan, Manhole Event Report, at 24 (June 24, 2011) (Staff Comments on 2011 Consolidated Report).

Company has ceased to under-perform. Such a result would do violence to the public interest, allowing Pepco to increase its profits and enrich its shareholders while ratepayers suffer with inferior service. Therefore, the Commission must take this opportunity to prevent the public interest from being sacrificed on the altar of corporate convenience by dismissing the rate application and requiring the Company meet the pre-conditions entailed herein *before* the Commission will consider the Company's request for higher rates. Doing so will bring into balance the interest of ratepayers and the Company.

III. DISCUSSION

A. THE COMMISSION HAS THE AUTHORITY TO DISMISS THIS CASE.

Well established case law in the form of state utility commission decisions upheld by appellate courts provides this Commission with the legal authority to dismiss the instant case and pre-condition further consideration of a rate increase on the Company's adherence to a set of criteria that will ensure the Company will make sound management decisions that yields the consistent delivery of safe, adequate and reliable service.

1. Evaluating service quality is essential to assessing the reasonableness of rates, and the Commission may require such issues be addressed before entertaining rate requests.

The Commission is required to ensure that "every public utility doing business within the District of Columbia ... furnish[es] service and facilities reasonably safe and adequate and in all respects just and reasonable" and public utility charges for such service are just and reasonable.[15] In carrying out that duty, the Commission must take the public utility's service quality into account when assessing the reasonableness of proposed rates. In the circumstances of this case, it would be unreasonable to consider Pepco's application before the Company demonstrates that it has fulfilled certain conditions necessary to ensure that its service-quality issues will be addressed.

As other public utility commissions have observed when construing broad statutory authority similar to that which this Commission enjoys, "unless the quality or value of service rendered by a utility is taken into consideration a judgment on the lawfulness, justness, and reasonableness of the rates sought cannot be made."[16] Where service-quality issues are raised, the need to evaluate those issues in connection with or as a precursor to considering requested rate increases derives from the nature of the regulatory compact:

> It is our opinion that in exchange for the utility's provision of safe, adequate, and reasonable service, the ratepayers are obligated to pay rates which cover the cost of service which includes reasonable operation and maintenance expenses, depreciation, taxes and a fair rate of return to the utility's investors. Thus,... a *quid pro quo* relationship exists between the utility and its ratepayers. In return for providing safe and adequate service, the utility is entitled to recover, through rates, these enumerated costs. We find this

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15 D.C. Code § 1-204.93. *See also* D.C. Code § 34-301(2) (authorizing the Commission to investigate the "methods employed ... in transmitting electricity for light, heat, or power"); *id.* § 34-911 (authorizing the Commission to investigate and to fix just and reasonable rates as well as the power, "if it be found that reasonable service is not supplied, ... to make such order and such changes ... as shall be just and reasonable.").

16 *Pennsylvania Gas and Water Company*, 61 Pa. PUC 409, 1986 Pa. PUC LEXIS 113, *30-31 (Pa. PUC 1986). In reaching this conclusion, the Pennsylvania Public Utilities Commission reviewed "precedents from other jurisdictions which have been faced with a utility which had significantly failed to provide safe and adequate service" and had refused requested rate increases. *Id.* (discussing cases from Missouri, Idaho, and Washington, as well as the D.C. Circuit's decision in *D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission*, 466 F.2d 394 (D.C. Cir. 1972) *cert. denied*, 409 U.S. 1086 (1972)).

> principle to be consistent with the standards enunciated in *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) wherein it was stated that the ". . . fixing of just and reasonable rates involves a balancing of the investor and the consumer interest. . . ."[17]

The D.C. Circuit expressly endorsed this view. In *D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission*, 466 F.2d 394 (D.C. Cir. 1972), the court found the "principle that ratemaking appropriately encompasses an examination and evaluation of the economy and efficiency of a public utility's operations *and the adequacy of its service*" to be "well settled."[18] As proof, the court cited cases from eighteen states and the District of Columbia.[19] In the case before it, the court upheld the Washington Metropolitan Area Transit Commission's order "conditioning further consideration of a fare increase ... upon satisfaction of requirements designed to improve its service."[20] The court upheld the Commission's order even though the carrier in that case, unlike Pepco, was "financially ailing," *id.*, and in a "seriously unstable and risky financial condition."[21] [22]

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17 *Id.* at *14-15.

18 *D. C. Transit System, Inc. v. Washington Metropolitan Area Transit Commission*, 466 F.2d 394, 408 (D.C. Cir. 1972)(emphasis added). *Id.* at 408 (emphasis added); *see also Pennsylvania Water & Power Co. v.*, 193 F.2d 230 (D.C. Cir. 1951) ("Rates charged by such utilities, as well as the services and contractual provisions affecting them, must be 'just and reasonable.' And what is 'just and reasonable' is not determined by the pressures of competition but by the adequacy of the service to the public, the fairness of the return allowed upon the investment in the company, and the degree to which the congressional objective of efficient use of the nation's power resources is served.").

19 *Id.* at nn.101-102 (citing *e.g., D.C. Transit Sys., Inc.* (Order No. 4480), 25 P.U.R.3d 371, 378 (D.C. Pub. Util. Comm'n 1958), which the court characterized as granting a "rate increase accompanied by admonition that proof of economical management as well as provident control of expenditures will be necessary before authorization of any further increase"); *see also id.* at nn.106-107 (citing additional cases).

20 *Id.* at 396.

21 *Id.* at 401. The Commission found that "[u]nder its current capital and debt structures, Transit [was] unable to provide and replenish the basic tools of its trade, its rolling stock" and that its "chronic cash-short condition result[ed] in too few drivers, too few mechanics, too few bus cleaners, and too high an

In doing so, the court quoted with approval the Commission's observation that:

> [T]he ratepayer and the company have a reciprocal obligation. We believe that obligation requires that the company give evidence that it can perform the services expected of it so that the ratepayer, in return for his contribution, will receive full value in the form of full services.

D. C. Transit System at 403.

2. Denying rate case consideration in light of the provision of inadequate service is not a violation of the Fifth Amendment or Due Process.

Reviewing courts have held that orders denying rate increases or reducing existing rates because of poor service do not violate Constitutional prohibitions against confiscatory rates. In upholding a PUC decision denying a rate increase, the Commonwealth Court of Pennsylvania held accordingly:

> [T]he *Fifth* and *Fourteenth Amendments to the U.S. Constitution* are not violated when a public utility is denied an increase in rates when it fails to provide adequate service to the public, even if the result is a rate of return less than it would otherwise be entitled to receive.[23]

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incidence of failure to provide basic service." *Id.* The Commission preconditioned any further consideration of a requested fare increase on Transit's acquisition of substantial new capital from other (non-ratepayer) sources. *Id.* at 410-11.

[22] It is important to note, in contrast, that Pepco is financially viable, as evidenced by the fact that the Company's shareholders continue to receive dividends on a regular basis. Moreover, dismissing this case would not harm Pepco's efforts to recover investments for AMI deployment as those costs are earning a return in a regulatory asset.

[23] *National Utils. Inc. v. Pennsylvania Pub. Utils. Comm'n*, 709 A.2d 972; 979, (Mar. 13, 1998)(emphasis added).

As to due process, the D.C. Circuit Court in the *DC Transit* case held that denying the transit company a rate increase is not a violation of due process:

> *The precise constitutional issue before us is whether the Commission exceeded the limits of due process when it made a fare raise contingent upon steps calculated to rectify serious deficiencies in the service Transit furnishes the bus riding public.* Transit's argument has one central theme: its revenues cannot be permitted to fall below the level of fair return, and surely not below the breakeven point, no matter what the circumstances, and even if its management is uneconomical and inefficient and its service inadequate. If Transit is correct, the Commission is powerless to sanction corrective measures by deferring further consideration of a fare increase. If Transit is correct, it may disregard its public responsibilities at will -- as the Commission found that it has frequently done and yet insist that the public respond to its demands for higher fares. *We cannot accept that position. We do not believe the Constitution left the Commission impotent to deal with the situation confronting it in a sensible manner.*[24]

In 1986, resting on this line of rationale, the Pennsylvania Utility Commission held that it "would be remiss [derelict] in exercising its regulatory duties and responsibilities which require that it establish "just and reasonable rates" if we authorized a rate increase to a utility that is providing inadequate and unreasonable service".[25] Similarly, the Missouri Commission in refusing to consider a rate increase for a telephone company holding that:

> All utilities are entitled to a fair return on investment but the utility and the commission should never lose sight of the cardinal principal [sic] of regulation, that the public should

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24 *D.C. Transit* at 422 (emphasis added).

25 *Pennsylvania PUC v. Pennsylvania Gas and Water Company*, 61 Pa. PUC 409, *31 (1986)(emphasis added).

> and must receive adequate service. Until the subscribers and the general public who may subscribe to telephone service from North Missouri Telephone Company receive the adequate service to which they are entitled, *this commission would be derelict in its duty in imposing a higher monthly rate for the antiquated service now being furnished.*[26]

3. Financial hardship is not an impediment to denying a rate request.

It is important to note that Pepco maintains one of the highest yields in the utility industry. Currently, the Company's shares are yielding an attractive 5.3%, well above the utility industry average of 4.2%.[27] Since 2002, Pepco's dividends to its shareholders have increased significantly.[28] Even if Pepco's financial picture was not healthy, it would not per se bar Commission action.

State commissions do not view the impending financial hardship a utility may experience as a result of having their rate request denied as a prohibiting factor from issuing such a decision. In the *DC Transit* case, the D.C. Circuit Court, in affirming the decision of the Washington Commission which established pre-conditions for considering the transit companies rate request held,

> If indeed, the Company temporarily sustains a loss while it complies with our precondition Order, it will not be because we have ordered it to do so, but because the effects of the Company's past decisions have now impacted so seriously upon its statutory obligation to provide the public with efficient, economical and adequate . . . service as to require us to direct remedial measures as a precondition to any fare adjustment. *The Constitution does not guarantee a public utility immunity from loss occasioned by uneconomic and*

26 *Re North Missouri Tel. Co., Inc.*, 49 PUR 3d 313, 318 (1963)(emphasis added).

27 The Value Line Report, May 27, 2011, p. 150.

28 *See*, OPC Attachment 1.

> *inefficient management decisions, and we do not believe that it bars a regulatory agency on a record such as this from taking adequate steps to protect the public interest even if the short term effect of such an order is a temporary loss to the Company.*[29]

Similarly, in 1986, the Pennsylvania Utility Commission denied consideration of a rate increase request from a water company despite the fact that the denial would impose a financial hardship on the company:

> Although PG&W has not argued in this proceeding that it would sustain a loss, it has argued that to deny the proposed rate increase would place the Company in a dubious financial position which would jeopardize future improvements. To this argument, we suggest that PG&W consider its 200 customers who currently have to boil their water before they can use it. We suggest that PG&W also consider its customers who have been purchasing bottled water to satisfy their basic domestic needs but must continue to pay their water bills. *Finally, we suggest that PG&W consider reducing the dividends paid to its shareholders and increasing the portion of the Company's profits designated for improvements to the Company's water system.*[30]

OPC submits the rationale expressed in the 1986 Pennsylvania PUC decision suggesting that the utility company consider how it should prioritize its earnings rings like a clarion bell a quarter of a century later and speaks directly to the present set of distressing circumstances created by Pepco. Pepco, like PG&W, should shift the burden of its failure to provide reliable service from its ratepayers to its shareholders. Specifically, Pepco should consider the frustration of customers who had to discard food, or live in homes

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29 466 F.2d 394, 423 (1972)(emphasis added).

30 *Pennsylvania PUC v. Pennsylvania Gas and Water Company*, 61 Pa. PUC 409, *41 (1986)(emphasis added).

without air conditioning or heat, small businesses that lost revenues or government agencies that were unable to conduct business but still had to pay their electric bill.

More recent cases have followed this precedent in reducing public utility rates or rejecting proposed rate increases on service-quality grounds. In 1995, for example, New Jersey courts upheld the decision of the state's Board of Public Utilities to "deny a rate increase because of a utility's poor performance over an extended period of time notwithstanding the fact that operating losses [would] inevitably follow from the denial."[31] Echoing the D.C. Circuit, the New Jersey court held that "the obligations of the utility and the consumer are interrelated and reciprocal," "price and performance are inextricably intertwined," and "inferior service deserves less return than normally would be forthcoming."[32] In 1998, Pennsylvania courts followed suit in upholding a state commission decision denying a requested rate increase on grounds that service was inadequate.[33] And in 2000, the Supreme Court of Vermont upheld a decision slashing a public utility's authorized return on equity in half, from 10.50 percent to 5.25 percent, on the basis of findings of substantial misconduct and mismanagement.[34]

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31 *In re Valley Road Sewerage Co.*, 285 N.J. Super. 202, 666 A.2d 992, 996 (N.J. Super. Ct. App. Div. 1995).

32 *Id.* at 209.

33 *National Utils. Inc. v. Pennsylvania Pub. Utils. Comm'n*, 709 A.2d 972; 1998 Pa. Commw. LEXIS 160 (Mar. 13, 1998).

34 *In re Citizens Utils. Co.*, 171 Vt. 447 (Vt. 2000).

4. The Commission has authority to establish conditions before considering or implementing rate increases.

Turning to the means by which the *quid pro quo* between investors and ratepayers might be maintained, the court found that "[p]reconditions to fare increases designed to assure quality of service have long been recognized," noting that the Commission's predecessor, the Public Utilities Commission of the District of Columbia, had "turned down an otherwise justified fare increase on a showing of inadequacy of the Carrier's service notwithstanding that operating losses were inevitable without the increase."[35] Since then, the court noted, "commentators have advocated such preconditions, and regulatory agencies have imposed and courts have sustained them."[36] At times the order set new rates and immediately suspended them pending compliance with the condition; at other times, the agency withheld its consideration of a requested rate increase until the condition was met.[37] "That the order assumes one or the other form is obviously without consequence insofar as its essential validity is concerned." *Id.*

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35 *D.C. Transit* at 411.

36 *Id.* at 411-12 (citing, *inter alia*, *Riverside Grove Water Co., Inc.*, 20 P.U.R.3d 117, 120 (Calif. Pub. Util. Comm'n 1957) (minimum system improvements required before increase would be allowed); *Parker*, 19 P.U.R.3d 400, 403 (Ga. Pub. Serv. Comm'n 1957) (rates reduced to make them commensurate with poor quality of service; subject to restoration after 60 days if sufficient improvement is demonstrated); *Midwest Tel. Co., Inc.*, 23 P.U.R.3d 26, 31 (Ind. Pub. Serv. Comm'n 1958) (general rate increase authorized, withheld as to one area until service was made reasonably adequate, inspected and certified by engineers of department of commerce); *Northern Mo. Tel. Co., Inc.*, 49 P.U.R.3d 313, 317 (rate increase denied until rehabilitation of system and modern facilities were installed); *Cass County Tel. Co.*, 42 P.U.R. (n.s.) 48, 52 (Mo. Pub. Serv. Comm'n 1941) (rate increase withheld as to one area until system was restored and rehabilitated); *Consolidated Tel. Co.*, 18 P.U.R.3d 152, 157 (Mo. Pub. Serv. Comm'n 1957) (50% of fare increase was authorized, remaining 50% increase withheld until service improvements were instituted); *Western Light & Tel. Co.*, 10 P.U.R.3d 70, 76 (Mo. Pub. Serv. Comm'n 1955) (increase denied until company could show that substandard service has been improved); *Blair Tel. Co.*, 51 P.U.R.3d 262, 264 (Neb. St. Ry. Comm'n 1963) (increase permitted only after old equipment was replaced with new); *Southern Nev. Tel. Co.*, 11 P.U.R.3d 169, 173 (Nev. Pub. Util. Comm'n 1955) (increase allowed on services which had been modernized, an increase on the remainder was preconditioned on their modernization)).

37 *D.C. Transit* at 412 (citing cases).

Based upon the rationale used in the aforementioned cases, OPC is asking the Commission to use the full breadth of its statutory authority to defer consideration of the instant rate case until Pepco has developed a comprehensive and thoroughly vetted plan to address obvious and substantial reliability concerns. Specifically, OPC recommends the Commission's consideration of Pepco's rate increase be based upon meeting a set of conditions derived in large measure from OPC's review of the 2011 Consolidated Report and the recommendations set forth by Commission Staff in its Report on Pepco's 2011 Consolidated Report. OPC's recommended conditions are set forth at the end of this motion.

5. The factual basis to dismiss Pepco's rate application is compelling and requires the Commission condition consideration of the rate increase on meeting certain criteria.

Having established that the Commission has a strong legal basis to dismiss Pepco's application and pre-condition further consideration until certain criteria are met, we now turn our attention to the facts that call for such action. The strength of the evidence proving that Pepco is not delivering an adequate level of service does not come from a single source, but from a chorus of witnesses charged with evaluating the viability of Pepco's service quality.

Although Pepco will claim that it is delivering quality service because it met the EQSS standards established several years ago, OPC submits the Company's performance over the past several years, including the time when it received nearly $47 million from two back to back rate cases, shows a company hampered with poor management decisions, a lack of knowledge of its own network, failure to remedy recurring problems and failure to develop a forward looking plan for addressing network issues. Due in large part to these failures, the Commission directed Staff, OPC and Pepco to develop a new set of EQSS standards. Thus, there is little doubt that Pepco is a company that is failing to deliver quality service.

B. PEPCO'S SERVICE QUALITY IS UNACCEPTABLE, AND THE COMPANY HAS NOT DEMONSTRATED THAT ITS "RELIABILITY ENHANCEMENT PLAN" IS A PRUDENT APPROACH TO IMPROVING RELIABILITY.

Since the Commission's deferred consideration of Pepco reliability issues in Formal Case No. 1076, the situation has only grown worse. Pepco continues to experience too many non-storm-related service interruptions and to take too long to restore service after outages occur. Moreover, investigations of the reasons behind certain of the outages and scrutiny of Pepco's reliability-related filings have begun to uncover a troubling story.

1. OPC's Comments on Pepco's "Comprehensive Reliability Plan" outlined serious continuing concerns, including Pepco's apparent inability to identify and to correct worst performing feeders.

In November 2010, the Office filed comments addressing Pepco's Comprehensive Reliability Plan and outlining several serious concerns. OPC began with a disconcerting observation foreshadowing later problems: that, in the span of one year, Pepco had submitted three filings with three different totals for the number of feeders or circuits servicing the District, without explaining the discrepancies.[38] In the grand scheme of things, OPC noted, "the number of feeders may not seem to be a critical individual

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[38] Formal Case Nos. 766, 991, OPC Comments Addressing Comprehensive Reliability Plan (November 22, 2010).

number," but the unexplained inconsistencies in Pepco's numbers "reinforces the negative perception that PEPCO's records and supporting data infrastructure are unreliable and un-vetted, and raises questions about how effectively PEPCO is running and managing its operations in the District of Columbia."[39]

OPC also explained that the section addressing Pepco's "enhanced" priority feeder program failed to inspire confidence that electric reliability in the District would improve. The Office noted that Pepco has been required since 2001 to identify annually the worst performing two percent of the feeders on its system and to propose corrective actions. Yet, Pepco had proved ineffective at identifying and remedying problem feeders. As OPC explained:

> [I]t is not uncommon for feeders to reappear on the worst performing 2% feeder list. OPC's 2009 Comments Addressing PEPCO's 2009 Consolidated Report noted that 23 feeders, which constituted roughly 3% of the PEPCO population of approximately 750 feeders, have accounted for 48.6% of the occurrences on the worst 2% performing lists over the past seven years. Of the 19 feeders appearing multiple times, four were also included in PEPCO's 2010 Priority Feeder list. The Commission Staff agrees. Staff's Report on PEPCO's 2010 Consolidated Report explains from 2004-2010, 39 feeders have been repeat priority feeders. In other words, in the last six years, 39 feeders have appeared on the worst 2% performing feeder list more than once.[40]

OPC concluded that it would be unreasonable to allow Pepco to increase spending on an ineffective program, without including proposed additional work, timelines, plans, or schedules. *Id.* That, unfortunately, remains the case today.

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39 *Id.* at 5.

40 Formal Case Nos. 766, 991, OPC Comments Addressing Comprehensive Reliability Plan (November 22, 2010) p. 14. *See also*, OPC's Attachment 2, from the February 2011 Consolidated Report, p. 107 showing the number of repeat priority feeders from 2002 – 2011.

2. Subsequent events confirmed OPC's concerns about Pepco's performance.

Subsequent developments confirmed these concerns and others raised in OPC's comments. In December 2010, The Washington Post published an investigative analysis examining "Why Pepco can't keep the lights on."[41] The Post found that Pepco's reliability had declined by 2008 to a point "near the bottom in keeping the power on and bringing it back once it goes out" according to several reliability surveys, including a 2008 survey that ranked Pepco last among participating utilities on two of three reliability measurements. Based on a 2009 survey, the Post concluded that the average Pepco customer experienced 70 percent more outages than customers of other large urban utilities, and the outages lasted more than twice as long.[42]

The Post's data coincided with the Company's own data and echoed concerns expressed by the Commission itself. In 2009, the Commission observed that "in addition to Pepco's evident declining reliability since 1998, Pepco's reliability when more recently compared to other utilities indicates that the Company's reliability as measured by the SAIDI and CAIDI is at or near the bottom."[43] As OPC recounted in its February 9, 2011

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41 Joe Stephens and Mary Pat Flaherty, "Washington Post Analysis: Why Pepco can't keep the lights on," Washington Post (Dec. 5, 2010).

42 The Post could not corroborate Pepco's claims that Washington's dense tree cover was responsible for its poor reliability showing, noting that utilities in the cities identified by Pepco as having denser tree cover than the district outperformed Pepco. The Post later reported evidence uncovered by this Commission that, since 2004, Pepco funding for District tree trimming was "declining or static" and that, in four years, Pepco did not spend the budget it allotted for vegetation management, sometimes under-spending by several hundred thousand dollars. Importantly, Pepco executives did not challenge the Post's findings. Pepco Holdings CEO, Joseph Rigby, conceded that "[o]ur stats are not where they need to be; [p]ick whatever metric you want" and that Pepco had to "own" responsibility for some of the deficiencies. With respect to tree trimming, Pepco Holdings' executive vice president for power delivery, David Velazquez, acknowledged that "it is clear to us that we have not been as aggressive as we should [be]."

43 Formal Case Nos. 766 & 991, Order No. 15152 at ¶ 60, rel. Jan. 6, 2009.

petition for an investigation into the reliability of Pepco service and the conduct of a management audit:[44]

> In each of the four studies, PEPCO ranks near the bottom with respect to each reliability index [SAIFI, SAIDI, and CAIDI]. In three out of the four studies, PEPCO ranked dead last among its peer utilities for SAIDI and in two out of the four studies PEPCO ranked dead last among its peer utilities for CAIDI. PEPCO never ranked in the top half for any of the reliability indices in any of the studies.

OPC Petition at 8.[45]

The Office further observed that Pepco's ongoing reliability issues continued throughout 2010 and into 2011. Between April and August 2010, for example, the Office explained that "DC ratepayers faced an extraordinary number of service interruptions, coupled with two major storm-related outages that featured multiple consecutive days without power, protracted restoration times, power surges, and inadequate responses to customer inquiries about service status," with the worst of the service interruptions occurring at times of oppressive summer heat, threatening the health and welfare of District residents.[46]

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44 Formal Case Nos. 982, 766 & 991, Expedited Petition of the Office of the People's Counsel For an Investigation of the Provision of Reliable Distribution Service by Potomac Electric Power Company and the Conducting of a Management Audit (Feb. 9, 2011).

45 SAIFI stands for "System Average Interruption Frequency Index." SAIDI stands for "System Average Interruption Duration Index," and CAIDI stands for "Customer Average Interruption Duration Index."

46 Formal Case Nos. 982, 766 & 991, Expedited Petition of the Office of the People's Counsel For an Investigation of the Provision of Reliable Distribution Service by Potomac Electric Power Company and the Conducting of a Management Audit, at7, 8-9 (Feb. 9, 2011).

A disturbing trend in Pepco's poor performance over the past three years is the number of sustained outages on primary and secondary overhead systems. The following chart shows the number of overall sustained outages increasing from 2008-2010.

Sustained Outages on Primary and Secondary Overhead Systems

	Number of Outages		
	Equipment	Load	**Total**
2008	275	57	**332**
2009	472	37	**509**
2010	579	72	**651**

The increasing trend of sustained outages is a clear indicator that aggressive steps need to be taken to address this aspect of Pepco's delivery of service.

Perhaps one of the most telling indicators of Pepco's poor performance is the number of outages, Reportable Events, when the weather is not a factor. Outages during these times are referred to as Blue sky outages.[47] As depicted in OPC Attachment 3, the number of reportable events usually exceeds points when there is measurable precipitation.[48]

In July 2010 after a storm that left many customers without power for day, Thomas Graham, Pepco's Regional President, evaluated his company's performance giving a grade of "D" as it concerned the Company's efforts to keep customers informed

[47] According to the Montgomery County Report, p. 19, 'Blue Sky' refers to fair weather conditions.

[48] OPC Attachment 3 comes from the 2011 Consolidated Report, p. 188.

about the status of the restoration process.[49] Problems continued in January 2011 when a snow storm resulted in reports of nearly 23,000 District customers without power, some for extended periods of time, despite Pepco's issuance of a news release touting its preparations for the storm.[50]

3. An independent consultant report concluded that Pepco's Reliability Enhancement Plan is not sound.

In March 2011, consultants engaged by the Maryland PSC to investigate the reliability of Pepco's electric distribution system and the quality of the service it provides to customers released their Final Report.[51] While the report focuses on Pepco's Maryland system, several aspects of it are relevant to—and raise troubling questions about—the Company's service in the District. Among other things, the report confirmed that "benchmarking studies generally show Pepco in the worst performing quartiles for SAIFI, SAIDI, and CAIDI" on the basis of Pepco's system-wide reliability. *Id.* at 16. The consultants observed that "Pepco's Maryland customers fare worse in the frequency of outages and the average duration of outages across all customers," while "District of Columbia customers that do experience outages … tend to be without power longer than those in Maryland." *Id.* at 17-18.[52]

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49 *Pepco Faces Criticism for Power Restoration After Severe July Storm*, Tom Fitzgerald, MyFoxDC.com, July 30, 2010.

50 OPC's Expedited Petition at 9.

51 Evaluation of the Reliability and Quality of the Electric Distribution System of Potomac Electric Power Company, Final Report, Prepared by First Quartile Consulting and Silverpoint Consulting LLC, Maryland Public Service Commission Case No. 9240 (Mar. 2, 2011) ("First Quartile Report")(available at http://webapp.psc.state.md.us/Intranet/Casenum/NewIndex3_VOpenFile.cfm?filepath=C:\Casenum\9200-9299\9240\Item_44\\FirstQuartile-Silverpoint-PepcoInvestigationFinalReport.pdf).

52 D.C. only statistics, reviewed in Staff's Comments on Pepco's 2011 Consolidated Report, indicate that Pepco ranked close to the median of all SAIFI results, in the middle of the third quartile for SAIDI, and in the 4th quartile for CAIDI. Formal Case Nos. 766 & 991, Staff Report on Pepco's 2011 Consolidated

Perhaps most relevant for purposes of the instant rate case, the Maryland PSC's consultants were particularly unimpressed with the quality of Pepco's quarter-billion dollar "Reliability Enhancement Plan" ("REP"), which it characterized as resulting from a "ready-shoot-aim approach" that virtually guaranteed that a portion of Pepco's planned capital spending would be "poorly targeted."[53] As the consultants explained:

> Pepco is vague on the amount of improvement that it will see from these REP projects overall. As we understand it, Pepco developed the REP in one month. In our view, this is essentially a quick attempt to throw money at the problem, or, more accurately, to quickly promise to throw money at the problem. It is critically important that the money spent actually be directed at projects that will yield the most improvement in reliability. **A more rigorous vetting of reliability-related projects would help ensure that Pepco is at least aiming its money at the right target, especially if funds become tight.**

Id. at 47-48 (emphasis added). In a similar vein, the Consultants observed that they were unable to adequately evaluate and benchmark Pepco's reliability practices in certain areas because of the Company's failure to retain the data necessary for the Consultants to be able to do so. Among other things, the Company was unable to produce records of its historic reliability-related O&M expenditures, which prevented evaluation of whether it had under-spent in this area.[54]

Report (June 24, 2011) at p. 37.

[53] First Quartile Report at 2 (observing that "Pepco acknowledged that it does not know whether the projects in the new plan will actually achieve its reliability goals because it had not fully analyzed them, which is a concern.").

[54] *Id.* at 49.

4. Pepco's May 31- June 2 outage raised even more serious questions about its ability to operate its electric distribution system reliably.

Additional "record keeping" deficiencies—ones with serious consequences—came to light as a result of the outage experienced from May 31, 2011 through June 2, 2011, by Pepco customers in the area of New York Avenue and First Street, N.E. The outage left more than 2,200 "customers,"[55] including hundreds of residential customers, some of whom were elderly, without power and cooling during severe weather, and lasted more than 48 hours. The outage resulted in the closure of federal and District of Columbia agencies,[56] as well as schools and local businesses. Pepco admitted that the outage occurred because the Company failed to record accurately the size and capacity of the cables that were used to supply electric service to that area.[57] As Pepco explained in response to a Staff data request:

> Based upon the information in Pepco's Geographical Information System (GIS), larger cable sizes were used to evaluate the cable/feeder ratings using Pepco's network system model in Easypower (Easypower is a network analysis tool for evaluating capacity and power flow, which is one of the leading product used in the industry).

55 As the Commission has observed, "a 'customer' is an account on the Pepco system, and does not necessarily represent the number of actual persons affected by an outage. For example, a building may be one account, and therefore one customer, but there may be hundreds of persons who work or live in the building who would be affected by the outage." Order No. 16432 at n.13.

56 Affected District government agencies included the Department of Insurance, Securities and Banking, the D.C. Housing Authority, the D.C. Department of the Environment, and the D.C. Public Schools Central Office. Affected Federal agencies included the General Service Administration, the Department of Justice, and the Federal Energy Regulatory Commission.

57 *See,* Formal Case No. 1062, *In the Matter of Investigation of the Power Outage in the District of Columbia on June 13, 2008*, Response to Potomac Electric Power Company to Commission Order No. 16432 (Aug. 8, 2011) ("Pepco Response to Order No. 16432"), at 1 ("Pepco identified that the root cause for the Northwest Network Group shutdown was that sections of the primary feeder cables in the portion of the network where the failure occurred were operating beyond their thermal capabilities .... due to a mismatch between the electrical model used to design, maintain, and operate the system and the actual primary feeder cable size in the system.").

> Additionally, the maps utilized to operate the network by System Operations also indicated that the cable size in the network was larger than the cable which was actually in the network. As a result, the feeders were operated beyond their rated thermal capabilities which resulted in cable failures.[58]

Following an initial investigation, the Commission became concerned that the mismatch between actual cable size and the cable size identified in Pepco's Geographic Information System ("GIS") could be systemic. "At best, Pepco's GIS and maps are partially inaccurate and, at worst, the system has an indeterminate number of cables that may fail under high-load conditions."[59] The Commission thus directed Pepco to file "a comprehensive plan for examining its network … to ensure that its underground cables are adequately sized for existing and future loads."[60] Pepco submitted a plan to evaluate and identify corrective actions for the 8 highest-priority feeders by December 2011, with corrective actions to be completed by December 2012.[61] It has not provided, however, any time estimate for evaluating and taking corrective action with respect to the rest of its system.[62]

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58 Formal Case No. 1062, Pepco Response to Staff Data Request No. 1-2, filed June 27, 2011.

59 Formal Case No. 1062, Order No. 16432 ¶ 11.

60 Formal Case No. 1062, Order No. 16432 at ¶¶ 11, 16.

61 Formal Case No. 1062, Pepco Response to Order No. 16432 at 2.

62 Pepco states that it will evaluate and undertake corrective action on its remaining networks once the first 8 networks are complete, but has provided no estimated timeframe for completion of the evaluation and corrective action with respect to the remaining networks. *Id.*

5. The Commission Staff's review of Pepco's 2011 Consolidated Report concluded that Pepco has failed to address fundamental issues concerning the management of its network.

The accuracy of Pepco's record keeping and the effectiveness of its reliability-improvement programs also were called into question by the Commission Staff's review of Pepco's 2011 Consolidated Report. Commission Staff observed that, from 2004 to 2011, there had been 44 Repeat Priority Feeders, 12 of which were unreported by Pepco.[63] Of the sixteen priority feeders identified in Pepco's 2011 report as scheduled for corrective action, nine had been included in prior years' Priority Feeder Program—in some cases, as many as four times.[64] The observation led Staff to "wonder[] if Pepco's initial corrective actions and analysis are prudent and borne of sufficient analysis"[65] and to chastise Pepco for "the unacceptable, continuing problem of repeat priority feeders,"[66] which "seriously impugns the adequacy and sufficiency of Pepco's efforts to remediate worst performing feeders."[67] The Commission itself "has been concerned that feeders were appearing on the Priority Feeder List multiple times" and that Pepco's remedial actions appear "insufficient."[68] More generally, as Commission Staff observed in its

63 Formal Case Nos. 766 & 991, Staff Report, Executive Summary (June 24, 2011).

64 *Id.* at 32.

65 *Id.* Staff continued by noting that "[i]n Pepco's own words regarding feeder performance, 'The corrective actions described are initial measures necessary to improve performance. Additional corrective actions may result from continuing analysis of the outage data and detailed engineering.'" Staff concluded that "[i]t appears that the initial corrective actions taken by Pepco to remediate priority feeders are insufficient in the majority of instances." *Id.*

66 Formal Case Nos. 766 & 991, Staff Report (June 24, 2011) at 37.

67 *Id.* at 37. Staff also observed that, although Pepco indicated that there were 32 repeated priority feeders between 2002 and 2011, Staff's consultant found 44, raising a concern about the accuracy of Pepco's records. *Id.*

68 Order No. 16426, ¶ 9.

comments on Pepco's 2011 Consolidated Report, "the goal of first quartile reliability performance remains a distant target requiring considerably more commitment and attention from Pepco management."[69]

6. The Findings Reached in Montgomery County Report are Indicative of a Company that is Under-performing.

In August 2010, the Maryland Public Service Commission established an intensive investigation into the reliability of Pepco's electric distribution system and the quality of electric distribution service that Pepco is providing its customers.[70] One of the parties to this proceeding, Montgomery County Maryland, issued a report on Pepco's performance. The following five findings summarize the issues Pepco is experiencing in delivering service in Montgomery County[71]:

- Pepco's performance under both Non-Major Event conditions and during Major Events can be judged inferior by any reasonable standard and clearly so by a collective set of standards. This condition has persisted since 2005.

- Pepco's reliability during Non-Major Events has suffered primarily from inattention to long-term planning and underinvestment in the utility's electricity distribution infrastructure.

- Pepco's infrastructure significantly underperforms due to the lack of a proactive preventive maintenance program including the identification of critical maintenance practices, effective record keeping, and continual improvement. This approach allows similar failures to occur, and reoccur, over multi-year periods.

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69 Formal Case Nos. 766 & 991, Staff Report (June 24, 2011) at 42.

70 Case No. 9240, In The Matter of an Investigation Into the Reliability and Quality of the Electric Distribution Service of Potomac Electric Power Company.

71 Pepco Work Group Final Report, Montgomery County Maryland, April 20, 2011, p. 19.

- Much of Pepco's system that is served by Underground Residential Distribution (URD) cables is nearing the end of its reliable service life and there is no long term plan for assaying the condition of the system, nor a plan for its replacement.
- Pepco's ability to assess system operating status is technologically out-of-date and depends heavily on customer reporting.

OPC submits although this report addresses issues in Montgomery County, it is focused on the performance of the same electric company that delivers service here in the District of Columbia. Therefore, similar findings are likely to be found here in the District of Columbia if the Commission were to conduct an in depth investigation into Pepco's performance. OPC has repeatedly requested the Commission to conduct such an investigation in the District of Columbia, but those requests have been denied.[72] In light of the Montgomery County Report and the independent report conducted for the Maryland PSC that highlighted several deficiencies in Pepco's Reliability Performance Plan, this Commission should exercise caution in considering and granting a rate increase before it is determined that Pepco's plan for delivering electric service and its plan for improving service, the Reliability Enhancement Plan, is prudent and likely to produce consistent reliable electric service.

[72] *Formal Case Nos.* 766, 982, 991,1002, 1026 and 1062, *In the Matter of the Investigation of the Potomac Electric Power Outage in the District of Columbia on June 13, 2008*, et al, Commission Order No. 15667, dated Jan. 25, 2010.

C. THE COMMISSION MUST REQUIRE PEPCO TO MEET CERTAIN CONDITIONS DESIGNED TO IMPROVE ITS DELIVERY OF SERVICE BEFORE THE COMMISSION WILL CONSIDER THE COMPANY'S RATE INCREASE APPLICATION.

Under the extant circumstances, the Commission cannot pass on the reasonableness of Pepco's proposed rates and its RIM tracker without considering whether Pepco is providing customers with adequate service. As courts have found, the payment of public utility rates affording a fair opportunity for a return on investment is a *quid pro quo* that depends on the utility's provision of "safe, adequate, and reasonable service."[73] The facts here compel the conclusion that Pepco is not currently providing adequate service, and the failure to provide such service justifies dismissal of the request for rate relief. While Pepco argues that a substantial rate hike and approval of the RIM tracker are steps necessary to protect against the Company "under-earning," Pepco has no entitlement to such protection when it is demonstrably under-*performing*.

As noted above, courts have upheld the imposition of service-related pre-conditions that must be fulfilled before a public utility commission will entertain a request for rate relief.[74] OPC requests the Commission dismiss Pepco's application without prejudice to re-filing upon a showing that it has satisfied the following conditions, which OPC has adapted from the list of recommendations contained in Commission Staff's comments on Pepco's 2011 Consolidated Report. Specifically, the

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73 *Pennsylvania Gas and Water Co.*, 61 Pa. PUC 409, *14-15.

74 *See D.C. Transit System, Inc. v. Washington Metropolitan Area Transit Comm'n*, 466 F.2d at 411-12 (discussing cases).

Commission should not entertain Pepco's request for rate relief until the Company can demonstrate that it has:

1. Improved its SAIFI, SAIDI, and CAIDI numbers;[75]

2. Incorporated reliability performance into the Company's performance appraisal system and its executive and management compensation programs;[76]

3. Conducted an audit of its infrastructure, including but not limited to an assessment of the age and condition of its equipment;[77]

4. Performed "a focused audit of its vegetation management program and practices, including field observation of a statistically valid sample of tree conditions on the primary, secondary, and service drop portions of the overhead electric distribution system in the District";[78]

5. Implemented a practice requiring the Company's CEO to sign off on a daily outage report, thereby focusing management attention on the Company's reliability issues; and

6. Adhere to any other requirements the Commission deems reasonable to ensure that Pepco's plan to improving its system is viable.

Taken together, these pre-conditions will satisfy the public interest as Pepco will be on a path towards consistently delivering safe, adequate and reliable service. By no means should ratepayers be required to shoulder yet another rate increase while the Pepco continues to provide subpar service.

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75 *See generally* Formal Case No. 766, Staff Report on the Potomac Electric Power Company's 2011 Consolidated Report: Productivity Improvement Plan, Comprehensive Plan, Manhole Event Report, at 43-44 (June 24, 2011) (Staff Comments on 2011 Consolidated Report).

76 *Id.* at 44.

77 *Id.* at 43 (Staff recommendation #6).

78 *Id.* (Staff recommendation #5).

IV. CONCLUSION

WHEREFORE, OPC respectfully requests the Commission dismiss Pepco's rate increase application and condition consideration of the rate increase upon Pepco meeting the criteria outlined herein.

Respectfully submitted,

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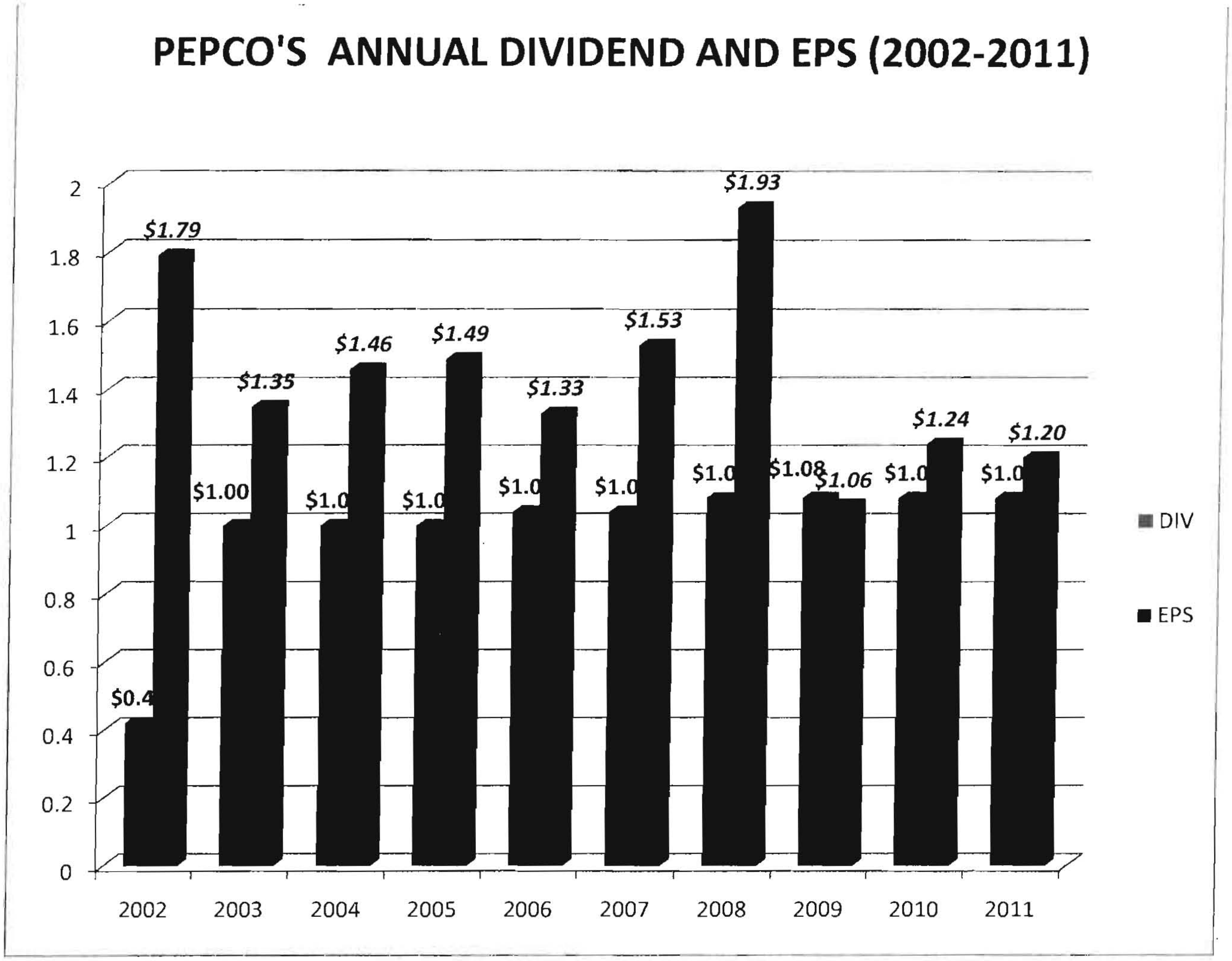
Dated: August 18, 2011

OPC's Attachments

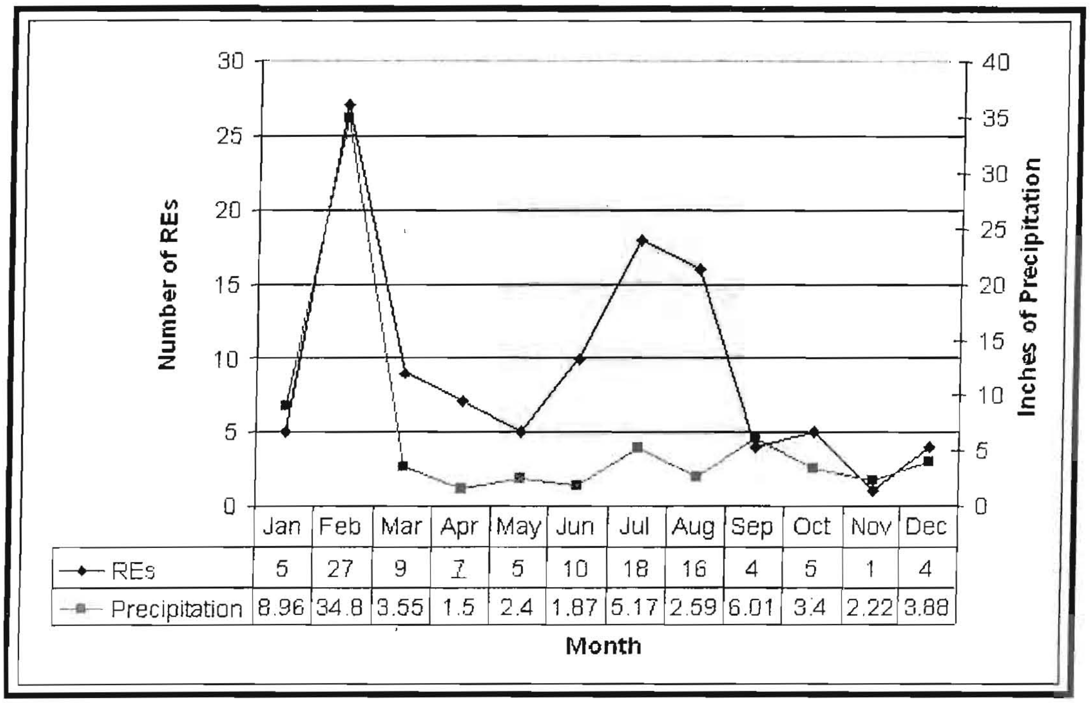
OPC Attachment 1



Numbers derived from the Value Line Report, May 27, 2011, p. 150.

District of Columbia Repeat Priority Feeders (2002 - 2011)					
			Number of Appearances on Priority Feeder List (Since 2002 Priority Feeder List)		
Count	Feeder No.	Years on the Priority Feeder List	Two	Three	Four
1	27	2003, 2007, 2009		X	
2	30	2006, 2011	X		
3	252	2004, 2006	X		
4	14007	2003, 2005, 2008		X	
5	14008	2002, 2004, 2008, 2011			X
6	14014	2004, 2006	X		
7	14015	2004, 2009	X		
8	14054	2004, 2007	X		
9	14200	2009, 2011	X		
10	14700	2004, 2010	X		
11	14717	2003, 2007, 2009		X	
12	14729	2004, 2006	X		
13	14768	2005, 2007, 2009		X	
14	14769	2002, 2007, 2011		X	
15	14787	2005, 2008	X		
16	14890	2008, 2011	X		
17	14896	2007, 2011	X		
18	14900	2002, 2007, 2009, 2011			X
19	15009	2005, 2009	X		
20	15170	2006, 2010	X		
21	15172	2006, 2010	X		
22	15197	2005, 2007	X		
23	15199	2004, 2010	X		
24	15206	2008, 2010	X		
25	15701	2003, 2005, 2010		X	
26	15703	2004, 2006	X		
27	15705	2003, 2009, 2011		X	
28	15706	2009, 2011	X		
29	15707	2007, 2010	X		
30	15709	2004, 2006, 2008, 2010			X
31	15801	2002, 2005, 2008, 2010			X
32	15943	2008, 2010	X		

Table 2.3-P



	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
REs	5	27	9	7	5	10	18	16	4	5	1	4
Precipitation	8.96	34.8	3.55	1.5	2.4	1.87	5.17	2.59	6.01	3.4	2.22	3.88

Figure 3-16: REs and Total Precipitation by Month (2010)

CERTIFICATE OF SERVICE

Formal Case No. 1087, In the Matter of the Application of Potomac Electric Power Company For Authority To Increase Existing Retail Rates and Charges For Electric Distribution Service

I hereby certify that on this 18th day of August, 2011, a copy of the Office of the People's Counsel's Motion to Dismiss Pepco's Application for a Rate Increase. was served on the following parties of record by hand delivery, first class mail, postage prepaid, or electronic mail:

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