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May 22, 2014

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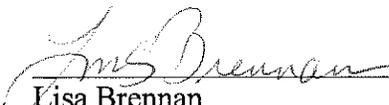
Re: Case No. 9336

Dear Mr. Collins:

Enclosed for filing in the above referenced matter are the original and seventeen (17) copies (five three-whole punched) of the Initial Brief of Montgomery County, Maryland.

Please feel free to call if you have any questions regarding this matter.

Respectfully submitted,



Lisa Brennan
Assistant County Attorney

Enclosure

cc: All parties in Case 9336

**BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND**

IN THE MATTER OF THE
APPLICATION OF POTOMAC
ELECTRIC POWER COMPANY FOR
ADJUSTMENTS TO ITS RETAIL RATES
FOR THE DISTRIBUTION OF
ELECTRIC ENERGY

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CASE NO. 9336

**INITIAL BRIEF OF
MONTGOMERY COUNTY, MARYLAND**

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May 22, 2014

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BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF THE *
APPLICATION OF POTOMAC *
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ADJUSTMENTS TO ITS RETAIL RATES *
FOR THE DISTRIBUTION OF *
ELECTRIC ENERGY *

INITIAL BRIEF OF MONTGOMERY COUNTY, MARYLAND

Montgomery County, Maryland (“Montgomery County”) submits this Initial Brief pursuant to Order No. 86109, issued by the Public Service Commission of Maryland (“Commission”) in this proceeding on January 8, 2014.

I. INTRODUCTION

On December 4, 2013, Potomac Electric Power Company (“Pepco” or “Company”) filed an application for an increase in its retail rates for the distribution of electric energy. The Company requested a \$37.4 million increase in its Maryland distribution rates and an authorized return on equity (“ROE”) of 10.25% related to its approximate 534,000 electric service customers in Montgomery and Prince George’s counties.¹

¹Pepco’s Application, December 4, 2013 requested \$43,343,000. VonSteuben Rebuttal Testimony, p. 2, lines 11-12 (Pepco Ex. 13), proposes a revised revenue requirement of \$36,617,000. Pepco’s April 15, 2014 filing update to RMA 2 (the errata filing to its April 14, 2014 filing) shows a revised revenue requirement of \$37,410,000. Also, Pepco’s filed Comparison Chart shows a revenue requirement of \$37.4 million.

Pepco's application was filed only five months after the Commission denied \$32.9 million of its requested \$60.8 million increase in Case 9311, resulting in a revenue increase of \$27.9 million.²

Along with its December 4, 2013 application, Pepco filed Direct Testimony and exhibits from seven (7) witnesses, along with an income tax witness in its Rebuttal Testimonies. The data supporting its filing was submitted December 11, 2013. Supplemental Direct Testimony was filed by Pepco on January 24, 2014 (along with an update to the Data Supporting the Company's Application made on January 29, 2014).

On March 10, 2014, Direct Testimony was filed by Montgomery County, Office of Staff Counsel ("Staff"), Apartment and Office Building Association of Metropolitan Washington ("AOBA"), and Office of People's Counsel ("OPC"). Rebuttal Testimony was filed, on March 27, 2014, by AOBA and Staff as well as Pepco. On April 14, 2014, Surrebuttal Testimony was filed by Montgomery County, Staff, AOBA, and OPC.

Five days of hearings were held beginning on April 22, 2014. Two evening hearings for public comment were held on May 12, 2014 and May 14, 2014.

II. SUMMARY OF ARGUMENT

Pepco has failed to meet its burden of proof to support its request for a \$37.4 million increase in rates. Montgomery County has concluded that Pepco has a revenue surplus (excess earnings) and that rates should be reduced by an amount of \$1.5 million (as shown at Montgomery County's Updated Comparison Chart attached to this Initial Brief as "MC Initial Brief Attachment 1") to result in just and reasonable rates as

² *In Re Potomac Electric Power Company*, Order No. 85724 at page 1 (2013).

required by Maryland law.³ This is a substantial reduction of \$38.9 million from Pepco's proposed increase of \$37.4 million.

Montgomery County had originally included the Commission-approved Rate of Return ("ROR") of 7.63% from the prior rate case Case No. 9311 as a placeholder in its revenue requirement calculations for this rate case. After reviewing the position of all of the parties in this case, Montgomery County supports a ROR of 7.31% as proposed by the Maryland Office of People's Counsel.⁴

Montgomery County also raised relevant administrative and monitoring issues related to Pepco's Private Letter Ruling ("PLR") Request and the related Accumulated Deferred Income Taxes ("ADIT") on the Net Operating Loss Carryforward ("NOLC") to the Commission's attention. Pepco has now satisfied most of Montgomery County's initial monitoring concerns, such that the total amounts of the NOLC have been identified for each of the related years to assist in a calculation of customer refunds if Montgomery County prevails before the Courts or the IRS.⁵ However, we still have significant concerns with Pepco's PLR Request. Specifically, the Company did not seek or obtain objective input from adversarial parties before it filed the PLR Request and it does not even address the concerns of adversarial parties from the prior proceeding - - it only presents the biased opinions of Pepco.

And most importantly, the PLR Request includes carefully crafted wording intended to elicit a very limited response from the IRS to approve only the "one" possible

³ Md. Code Ann., Public Utilities Art. § 4-201

⁴ Woolridge Surrebuttal, p. 20, line 1 (OPC Ex. 26).

⁵ The NOLC has not yet been identified between depreciation-related (the only amount with potential tax normalization violation implications) and non-depreciation related amounts for each year to further assist with a calculation of customer refunds, if it is determined that only some or all of the depreciation-related portion of NOLC should be included in rate base.

allocation method requested by Pepco (the “with or without” method, also called the “last dollar” method) for allocating the NOLC to inclusion in rate base. And this “with or without” method overtly favors Pepco to the detriment of customers and all other parties, because it allows the maximum amount (and possibly all) of the NOLC to be allocated to inclusion in rate base. There are other potential NOLC allocation methods (which also do not presumably result in a tax normalization violation) which could allocate substantially less than 100% of the NOLC to inclusion in rate base.

Thus, the PLR Request, if granted in its current form, will substantially skew the playing field in Pepco’s favor and limit the Commission’s discretion. Montgomery County believes that the PLR Request should have been written in an objective manner to obtain a decision from the IRS that identifies “all” permissible methods (or at least several permissible methods) for allocating the NOLC to inclusion in rate base. And this approach would have given the Commission maximum flexibility and discretion in evaluating and selecting from these various allocation methods, because these methods can vary significantly in the amount of NOLC they would include in rate base.

III. ARGUMENT

A. Pepco’s PLR Request is Unduly Biased in Pepco’s Favor

Montgomery County wants to make it very clear that it is not attempting to relitigate the same contested NOLC issues from the prior Pepco and Delmarva rate cases, but it is necessary to address several related matters because of issues raised in Pepco’s testimony, particularly that of Mr. Warren and Mr. VonSteuben.⁶

⁶ Ostrander Surrebuttal, p. 4, lines 21-26 (MC Ex. 26).

1. Mr. Warren is Committed to Pepco's Position that All of the NOLC Must be Included in Rate Base to Avoid a Tax Normalization Violation

Prior to addressing the NOLC issues, it is important to establish some background information regarding Mr. Warren and his position on the NOLC-related issues in this proceeding and the prior Delmarva rate case. Mr. Warren has worked for the law firm of Miller & Chevalier Chartered ("Miller") for just over the past two years, since February 2012, practicing tax law.⁷ Mr. Warren was not a witness for Pepco in Case No. 9311 regarding the NOLC issue, but he was a witness for Delmarva Power & Light Company ("Delmarva" or "DPL") in Case No. 9317 regarding the same NOLC issues from the prior Pepco rate case.⁸

Mr. Warren has stated that he supports the same positions of both Delmarva in the prior rate case, and Pepco in this rate case (which is the same as Pepco's position in Case No. 9311) - - and this means that he supports including 100% of all NOLC in rate base (including all estimated amounts incurred beyond the test period but included in this rate case), or this will cause a tax normalization violation. In support of the Delmarva and Pepco positions on the NOLC, Mr. Warren stated:

Q11. Do you agree with the position the Company took in Case No. 9311?

A11. Yes I do. I agree with the Company's position on both points and filed extensive testimony on behalf of Pepco's sister company Delmarva Power & Light Company in Case No. 9317 explaining my analysis of these issues.⁹

As a further example, Mr. Warren stated that he agreed with DPL's position and that the NOLC should be included as an addition to rate base.¹⁰ Pepco also supported this

⁷ Warren Rebuttal, p. 1, lines 5-16 (Pepco Ex. 14).

⁸ Warren Rebuttal (Case No. 9317, July 1, 2013).

⁹ Warren Rebuttal, p. 5, lines 6-9 (Pepco Ex. 14).

same position in its prior rate case.¹¹ Furthermore, Mr. Warren's testimony in the DPL rate case attempts to support the inclusion of NOLC in rate base by referring to Treasury Regulation § 1.167(l)-1(h)(1)(iii),¹² although he concedes that this tax regulation "leaves something to be desired in the way of clarity and comprehensiveness",¹³ and that the normalization rules are only "implicated"¹⁴ in this tax regulation - - and so he has admittedly provided an interpretation of this tax regulation. Next, Mr. Warren, relies on Treasury Regulation § 1.167(l)-1(h)(6)(i) as support for including NOLC in rate base, but he also admits that this tax regulation only applies to an "ADIT reserve that can reduce rate base."¹⁵ Mr. Warren appears to conclude that if an ADIT can reduce rate base under the tax regulations, then it can be inferred that a NOLC should increase rate base - - but at most all he can conclude is that DPL's NOLC position is "consistent"¹⁶ with this tax regulation - - because no treasury regulation specifically says NOLC must be included in rate base in a regulatory proceeding.

¹⁰ Warren Rebuttal Testimony, p. 4, lines 14-21, p. 15, lines 15-23, p. 16, lines 1-7 and 15-19 (Case No. 9317, July 1, 2013). These cited pages either indicate Mr. Warren's agreement that NOLC should be included in rate base or his disagreement with Mr. Ostrander's position that NOLC should be excluded from rate base.

¹¹ Pepco Initial Brief, pp. 15-25 (Case No. 9311, June 3, 2013).

¹² Warren Rebuttal, p. 23, lines 9-15 (Case No. 9317, July 1, 2013).

¹³ *Id.*, at p. 23, lines 17-18.

¹⁴ *Id.*, at p. 24, lines 15-17.

¹⁵ *Id.*, at p. 24, lines 19-23.

¹⁶ *Id.*, at p. 25, lines 1-9.

2. Mr. Warren's Preparation of the PLR Request is Substantially Skewed to Obtain a Favorable PLR Decision from the IRS Because it does not Include all Relevant Information, it does not Accurately Reflect the Positions of Various Opposing Parties, and it Seeks to have the IRS Affirm Only Its Preferred Method that Allocates the Maximum Amount of NOLC to Inclusion in Rate Base

Mr. Warren states that he prepared the PLR Request for Pepco¹⁷ and Pepco's response to MC DR 2-14 included a copy of the PLR Request he prepared for DPL and also cited to OPC DR 4-49 Confidential Attachment A for a copy of the Pepco PLR Request.¹⁸ Mr. Ostrander's Direct Testimony indicates that he reviewed the Pepco PLR Request and he generally stated that he did not agree with the manner in which some of the information was represented because some important information was ignored, and some of the information was vague.¹⁹ Mr. Warren's Rebuttal responded to Mr. Ostrander's Direct Testimony, and Mr. Ostrander's Rebuttal Testimony explained his concerns with the PLR Request in more detail.²⁰

Mr. Warren states that he prepared the PLR Request and it met the requirements of the IRS, conformed to the Commission's Order, and endeavored to include all information that in his view would "conceivably be relevant to the IRS's deliberations."²¹ Although Mr. Ostrander agrees that Mr. Warren may have technically met the requirements of the IRS regarding the PLR Request, he believes that Mr. Warren did not include the complete facts of the case, he did not include additional objective information regarding opposing parties' positions, and he did not include all information that is

¹⁷ Warren Rebuttal, p. 6, lines 9-10 (Pepco Ex. 14).

¹⁸ Ostrander Direct, p. 9, lines 8-16 (MC Ex. 25). Pepco responses to MC DR 2-14 (MC Ex. 19) and OPC DR 4-49 Confidential Attachment A (MC Ex. 21) are also attached to Confidential pages of Ostrander Supplemental Testimony (MC Ex. 26A).

¹⁹ Ostrander Direct, p. 9, lines 19-21 (MC Ex. 25).

²⁰ Ostrander Surrebuttal, p. 16, lines 19-20, pp. 17-19, and p. 20, lines 1-5 (MC Ex. 26).

²¹ Warren Rebuttal Testimony, p. 6, lines 9-14 (Pepco Ex. 14).

conceivably relevant to the IRS deliberations.²² Instead, Mr. Warren merely included Pepco's detailed arguments and position in the PLR Request, along with a copy of the Commission's Order and he only vaguely refers to the positions of other parties and never by specific name or position on an issue.²³ For example, the PLR Request makes it appear that all opposing parties proposed an offsetting decrease to income tax expense as part of the NOLC issue,²⁴ and this is an important misrepresentation of the facts and Montgomery County's position on this issue which could end up being a significant factor that persuades the IRS to make a determination on the NOLC issue in Pepco's favor. Montgomery County and the Office of People's Counsel have two different positions on the income tax expense issue, Montgomery County and Mr. Ostrander did not propose that income tax expense be reduced as part of the NOLC issue but the Office of People's Counsel did propose a reduction in income tax expense.²⁵

Mr. Ostrander continues by explaining that based on the misrepresentation of facts, the IRS could view the NOLC and income tax expense issue as one combined non-severable issue supported by all opposing parties, and the IRS could find that the NOLC should not be excluded from rate base because this would also improperly result in a reduction of income tax expense under the opposing parties position, and thus the IRS could rule in Pepco's favor based on the wrong facts.²⁶

²² Ostrander Surrebuttal, p. 17, lines 10-15 (MC Ex. 26).

²³ *Id.*, at p. 17, lines 15-18.

²⁴ Pepco's Private Letter Ruling, see page 11 of 29 of the actual PLR (this is also page 20 of 222 of Pepco's response to OPC DR 4-49 Confidential Attachment A). Also, see page 13 of 29 of the actual PLR related to the tax expense issue in the "Rulings Requested" section of the PLR (this is also page 22 of 222 of Pepco's response to OPC DR 4-49 Confidential Attachment A).

²⁵ Schultz Surrebuttal Testimony, p. 39, lines 19-22, and p. 40, lines 1-2 (Case No. 9311, April 10, 2013). Mr. Schultz proposes "zeroing out income tax expense".

²⁶ Ostrander Surrebuttal, p. 18, lines 9-15 (MC Ex. 26).

Montgomery County and the Office of People's Counsel are both opposed to the Commission decision on the NOLC and have appealed this issue to the Courts.²⁷ Mr. Ostrander notes that, "if accuracy, relevant information, completeness, and objectivity were goals of the PLR, then most reasonable parties would look to opposing parties for some reasonable input in order to achieve these goals. The PLR falls significantly short of those goals."²⁸ Montgomery County was never contacted for its input to the PLR Request, and it believes the PLR Request would have been much more objective and reasonable, and the Commission better served, if the PLR Request would have reflected input from the parties opposing the NOLC issue in the Courts.

3. Mr. Warren's PLR Request was Carefully Crafted to Limit the IRS PLR Response to the One Tax Allocation Method that Allocates 100% (or the Maximum Amount) of the NOLC to Rate Base and This Appears Violative of the Commission's Order and Unduly Restricts the Commission's Regulatory Discretion

As was previously established, Mr. Warren's Rebuttal Testimony unequivocally supports Pepco's position from the prior rate case and in this rate case, which is that 100% of the NOLC is required to be included in rate base or this will cause a tax normalization violation. In fact, Mr. Warren's Rebuttal Testimony does not mention any method, alternative, IRS precedent, other PLRs, other regulatory decisions in another jurisdictions, or any single exception that would permissibly allow something less than 100% of NOLC to be included in rate base without a tax normalization violation. Mr. Warren's Rebuttal Testimony never admits or raises the issue that there are other tax

²⁷ Before the Circuit Court for Baltimore City, Maryland, Civil Action No. 24-C-13-006543, *In the Matter of the Petition of Montgomery County, Maryland for Judicial Review of the Decision of the Public Service Commission of Maryland in PSC Case No. 9311, Order No. 85724 In the Matter of the Application of Potomac Electric Power Company for an Increase in its Retail Rates for the Distribution of Electric Energy.*

²⁸ Ostrander Surrebuttal, p. 20, lines 2-5 (MC Ex. 26).

allocation methods that could allocate less than 100% of NOLC to rate base without a tax normalization violation. Finally, Mr. Warren's Rebuttal Testimony does not even address or explain the one tax allocation method that he includes in the Pepco PLR Request which is most favorable to Pepco's position, and this is the "with or without" method. However, Pepco's PLR Request (that was prepared by Mr. Warren) does seek to have the IRS approve only the "with or without" method as a permissible means for allocating the NOLC to inclusion in rate base, and Mr. Warren was cross-examined on this issue during the hearings.²⁹

Mr. Herzfeld: Again, going back to the ruling request, pages 22 through 23, the last sentence on page 22, and the sentence continues on page 23, and there -- would you agree that there you are requesting the Service to rule that any method other than the with or without method including the ratable allocation or prorating method would violate the normalization rules?

Mr. Warren: That's the way the ruling one is structured, yes.

Mr. Herzfeld: Wouldn't it have been possible to have drafted requested rulings which would have advocated the position that PEPCO took in Case 9311, that the required additions to rate base must be included, but also give the IRS the option to provide advice that if the ratable approach is used, the ratable allocation approach, the use of the ratable allocation approach would not violate the normalization rules?

Mr. Warren: The ruling could have been couched in those terms. But that wasn't the company's position. That wasn't the company's position in the underlying case and the directive was to support the company's case.³⁰

However, Pepco's PLR Request is not consistent with the Order in Case 9311 because it did not direct Pepco to obtain a PLR to support the company's position (or the

²⁹ Pepco's Confidential PLR Request, pp. 22 -23 of 29 (and pp. 3-32 of 222 of the Confidential response to OPC 4-49, Attachment A. (OPC Confidential Exhibit 15A) Note: Although OPC Exhibit 15A is classified as a confidential exhibit, by agreement with counsel, questions could be asked during the hearing about these pages. Volume V, Tr. p. 911:4-14.

³⁰ Volume V, Tr. p. 917:21-23; Tr. p. 918:1-21.

maximum amount of NOLC to be included in rate base), instead it said “[s]pecifically, we want to know for our ratemaking purposes, must any or all of the Company’s NOLC be included as an offset to the ADIT and reflected in rate base.”³¹

It is Montgomery County’s understanding that there are other permissible tax allocation methods that would allocate less than 100% of NOLC to rate base and not result in a tax normalization violation.³² Because an IRS PLR would normally only respond to the very specific question/issue asserted in a PLR Request, the phrasing of Pepco’s PLR Request may result in an IRS PLR that does not address the fact that another tax allocation method (such as the “ratable allocation” method) would not violate the normalization rules.

Thus, the PLR Request as carefully worded by Mr. Warren, asks a very limited question of the IRS which would restrict the tax allocation method to that which is preferred by Pepco and which maximizes the amount of the NOLC included in rate base. This unduly restricted PLR Request is clearly not consistent with the Commission’s Order in Case No. 9311. A PLR Request that would have had the objective input of adversarial parties, and a PLR Request that would have been consistent with the Commission’s objectives in Order No. 85724, would have sought to identify all allocation methods that are permissible by the IRS and will not result in a tax normalization violation. This would have given the Commission maximum discretion and flexibility in making a regulatory decision as to whether “any or all” of the NOLC should be included in rate base.

³¹ *In re Potomac Electric Power Company*, Order No. 85724 at p.28 (2013).

³² This is based on Montgomery County’s participation in the Conference of Right.

As noted in the April 29, 2014 hearing, a Conference of Right was held at the IRS on May 6, 2014 attended by Pepco as well as counsel for the Commission, OPC and Montgomery County.³³ **BEGIN CONFIDENTIAL *****

*****END CONFIDENTIAL**

4. A Similar Biased PLR Request Prepared by Mr. Warren was Addressed by the Connecticut Public Utilities Regulatory Authority Regarding Accumulated Deferred Income Tax-Related Issues in May 2014

As discussed above, Montgomery County is concerned that the biased phrasing of Pepco's PLR Request will result in a skewed response by the IRS that is unduly favorable

³³ Volume V, Tr. p. 941:12-17.

to Pepco's position of including the maximum amount of NOLC in rate base.

Commissioner Hoskins also noted her "surprise" at the tone of the PLR Request:

COMMISSIONER HOSKINS: The last thing I wanted to talk about was the letter. It's the first time I had the pleasure of reading one of those letters. I have to say I was a little surprised by the advocacy in it. I wanted to talk with you a little bit more about that.³⁴

Recently, the Connecticut Public Utilities Regulatory Authority ("Authority") had a similar reaction regarding the biased nature of a PLR Request prepared by Mr. Warren regarding treatment of the accumulated deferred income taxes ("ADIT") and potential tax normalization violation issues.

Mr. Warren was the witness on these tax issues for Connecticut Natural Gas Corporation ("CNG") in Docket No. 13-06-08³⁵ before the Authority regarding a different ADIT-related issue, although the Authority seeks to determine if its potential actions will result in a tax normalization violation (and the potential "tax normalization violation" concerns are the same in Maryland and Connecticut).³⁶ The Authority ordered CNG to seek a PLR from the IRS and also required the company to submit a draft to the Authority for review and approval before submitting it to the IRS. The Authority's Order 17 requires CNG to:

[S]eek a private letter ruling with regards to the specific question of, after extinguishment of an ADIT balance, whether or not a PUC directive to institute a ratemaking mechanism to reflect a credit to ratepayers of ADIT benefits lost through a 338(h)(10) election would constitute a

³⁴ *Id.*, at p. 952:18-22.

³⁵ Connecticut Public Utilities Regulatory Authority, Docket No. 13-06-08, Decision Issued January 22, 2014, p. 12, listed in the docket as "Final Decision, 01/22/2014 [13-06-08]."

³⁶ The Connecticut PLR Request seeks to determine if a public utility commission directive to institute a ratemaking mechanism to reflect a credit to ratepayers for the loss of benefits associated with deferred tax liabilities (due to the extinguishment of the ADIT liability balance recorded on the balance sheet following an acquisition under a 338(h)(10) election) would cause a tax normalization violation.

normalization violation. The Company shall file proposed draft PLR to the PURA, for approval, no later than March 14, 2014.³⁷

On March 14, 2014, CNG filed Mr. Warren's draft PLR Request to the Authority. In this recent Connecticut docket, a May 14, 2014, Letter ("May 2014 Letter") from the Authority to CNG, expresses numerous concerns regarding the biased nature of the draft PLR Request by Mr. Warren, which are the same concerns that Montgomery County has identified with Mr. Warren's drafting of the PLR Request in this Pepco proceeding. The May 2014 Letter explains the Authority's revisions to the PLR Request stating:

CNG's proposed letter was more of a CNG advocacy piece containing its legal theory for why the IRS should find a normalization violation. The CNG proposed letter also unfairly provided that CNG's expert witness on this issue in Docket No. 13-06-08, was also representing CNG, before the IRS.

The Authority's revision to the Company's letter removes CNG's language referencing the investment tax credit normalization rules and advocating for a finding of a normalization violation.

... The Authority is concerned with the ability of this tax attorney to present this issue before the IRS in an unbiased manner and requests the Company employ its in-house counsel before the IRS. The Authority questions CNG's use of the same tax attorney both as an expert witness before the PURA advocating a particular position and as a representative for CNG before the IRS in this Private Letter Ruling process unless the intent is to persuade the IRS to rule consistently with the Company's position presented in Docket No. 13-06-08....

The Authority has sought a Private Letter Ruling to assist the PURA in its decision making. The Private Letter Ruling request is not intended for CNG to control the Private Letter Ruling process. ... If the IRS requires additional information or wishes to learn the positions of the affected entities, the PURA, CNG and the Office of Consumer Counsel (OCC), should be able to participate in the IRS process on an equal basis. To that end, the Authority's revisions provide for greater transparency and equity to the PURA and the OCC by including them in the discussions between CNG and the IRS and by giving the PURA and the OCC the opportunity

³⁷ *Id.*, at p. 153.

to participate in any conferences held by the IRS on this matter. (emphasis added)³⁸

Montgomery County would encourage the Commission to find that the PLR Request filed by Mr. Warren in the current case has similar flaws and it is skewed to obtain a favorable and limited response for Pepco from the IRS. If the Commission does so, Montgomery County would encourage the Commission to require Pepco to amend its PLR Request with Commission and party approval.

5. Staff Does Not Appear to Have Endorsed the Language of the PLR Request

In addressing the drafting of his PLR Request, Mr. Warren states that members of the Commission Staff reviewed his initial draft and the final draft before it was filed with the IRS, and “[b]y the end of the process, Staff was satisfied with the request.”³⁹ Also, in response to Mr. Ostrander’s criticism’s he again states that the PLR Request “was satisfactory to the Commission Staff.”⁴⁰ Ms. Stinnette refutes Mr. Warren’s statements that Staff was satisfied with the PLR, and she states that the meeting with Mr. Warren was more of a question and answer session for information purposes but she did not consider it a meeting for making changes to any of Pepco’s PLR Request language.⁴¹ Mr. Stinnette emphasizes that Staff did not endorse or approve Pepco’s PLR request language at the meeting.⁴²

³⁸ Connecticut Public Utilities Regulatory Authority, Docket No. 13-06-08, Authority’s May 9, 2014 Letter to CNG listed in the docket as “Corres. 05/09/2014 [13-06-08] (PURA) - PURA’s response to CNG’s March 14, 2014 Compliance Filing for Order No. 17.”

³⁹ Warren Rebuttal, p. 6, lines 16-22 (Pepco Ex. 14).

⁴⁰ *Id.*, at p. 7, lines 4-6.

⁴¹ Volume V, Tr. p. 1026, lines 8-19.

⁴² *Id.*, at p. 1026, lines 20-23, and p. 1027, lines 1-3.

B. Pepco's Proposed True-Up Mechanism Should be Rejected

1. The Commission should reject Pepco's proposed True-Up Mechanism ("TUM") as set forth by the testimony of Mr. Ostrander

Regarding Pepco's post-hearing forecasted plant additions RMA 3 and 4, the Company proposes to update to actual amounts after the hearings via a True-Up Mechanism ("TUM") if actual plant additions are less than Pepco's estimated plant additions, and any shortfall will be credited to ratepayers through a regulatory liability that would accrue at the rate of return approved by the Commission and to be addressed in the Company's next filing. Conversely, if actual plant additions are greater than Pepco's estimated plant additions in this rate case, then there would not be any further adjustment and Pepco would seek recovery of these amounts in its next rate case.⁴³

The TUM should be rejected in its entirety.

First, and most importantly, the TUM will not even be necessary or applicable if Pepco's post-hearing forecasted reliability plant additions are rejected in a manner consistent with recent Commission rate case decisions.⁴⁴

Also, Pepco's TUM should be rejected for some of the same concerns that Mr. Ostrander expressed in the prior rate case regarding Pepco's proposed Grid Resiliency Charge ("GRC")⁴⁵ - - which is subject to Montgomery County's appeal in Case No. 24-C-13-006543. If the currently contested GRC is in place, then it is clearly not necessary to duplicate and complicate the process with another similar mechanism that virtually guarantees rate increases to customers without review of the related plant additions.⁴⁶

⁴³ Ostrander Direct, p. 31, lines 15-24 (MC Ex. 25).

⁴⁴ *Id.*, at p. 32, lines 4-7.

⁴⁵ Ostrander Direct Testimony, pp. 8-25 (Case No. 9311, March 8, 2013).

⁴⁶ Ostrander Direct, p. 32, lines 9-15 (MC Ex. 25).

Pepco's TUM has the same substantive problem as the GRC because it allows plant additions to be pre-approved prior to any objective evaluation, and once the plant additions are in the ground or paid for they will not be removed or disallowed as admitted by the Commission in rejecting Pepco's proposed Reliability Investment Recovery Mechanism in Case No. 9286.⁴⁷

In reality, though, *post hoc* prudence reviews will be largely ineffectual.... And unless the project experiences egregious waste, fraud or abuse, or fails to achieve any reliability improvements (if that could ever be determined), we suspect it will be difficult, if not impossible, for us to unpack *post hoc* any imprudence. The result, even if perhaps not the Companies' intent, will be that the additional process will create regulatory cover for the Company's reliability spending decisions, all (and only) for the purpose of enhancing the Company's cost recovery, and with no incremental reliability benefit. And as Dr. Goins testified, once these mechanisms are in place, they're difficult to get rid of.⁴⁸

Although the TUM is not technically a surcharge, it provides Pepco with most of the same advantages related to advance approval of related plant additions and guaranteed rate increases of a surcharge, and the Commission has historically rejected all surcharges (except for the contested GRC from the prior rate case) that are related to advance recovery of *projected capital costs from ratepayers*, although the Commission has accepted other surcharges related to *energy efficiency and demand response programs* in some cases.⁴⁹

There are numerous examples of other surcharges that are similar to the TUM regarding their intent and benefit to Pepco, and these surcharges have historically been

⁴⁷ *Id.*, at p. 32, lines 16-20, p. 33, lines 1-15.

⁴⁸ *In Re Potomac Electric Power Company*, Order No. 85028 at p. 146 (without footnote references) (2012).

⁴⁹ Ostrander Direct Testimony, p. 13, lines 10-21 (Case No. 9311, March 8, 2013).

rejected by the Commission and have also been rejected in other PHI Holdings, Inc. (“PHI”) jurisdictions.⁵⁰ Pepco has made clear they will continue to make these proposals to the Commission:

MR. RIGBY: We're making another attempt. I recognize that in the prior case that that type of a proposal was rejected. And as we think about what's ahead of us and also trying to balance the frequency within which we come in here, we wanted to introduce perhaps a new approach that we would hope would find more acceptance with the Commission.⁵¹

With the exception of the GRC in the prior rate case, the Commission has rejected virtually every argument of Pepco for similar mechanisms (such as trackers) that have the same intent and benefit to Pepco as the TUM in this case, and this includes the Commission’s rejection of Pepco’s RIM in Case No. 9286.⁵²

For all of the previously cited reasons, the Commission should reject Pepco’s proposed TUM in this proceeding.

C. Montgomery County’s Final Recommended Revenue Requirement

On May 2, 2014, Assistant Staff Counsel Ms. Garofalo filed an updated “Comparison of the Parties Positions” chart (“Comparison Chart”) which showed a final “Revenue Requirement” recommendation of Montgomery County of \$14.3 million. However, Montgomery County is now providing an Updated Comparison Chart with this Initial Brief cited as “Updated Comparison Chart” (MC Initial Brief Attachment 1). This Updated Comparison Chart shows Montgomery County’s final position reflecting Mr.

⁵⁰Ostrander Direct Testimony, the related examples are provided at p. 16, lines 10-22, pp. 17-18 (Case No. 9311, March 8, 2013).

⁵¹Volume I, Tr. p. 53, lines 16-23.

⁵²Ostrander Direct Testimony, the related reasons for rejecting the RIM in Case No. 9286 are provided at p. 19, lines 2-21, pp. 20-24, and p. 25, lines 1-19 (Case No. 9311, March 8, 2013).

Ostrander's recommendations, plus adjustments of other parties that Montgomery County is adopting post-hearing. This Updated Comparison Chart now shows that Montgomery County supports a final recommended rate reduction of \$1.5 million, and this includes adjustments of other intervenors that Montgomery County does not oppose.

Montgomery County is updating its recommended revenue requirement, and this is consistent with Mr. Ostrander's testimony that states:

Montgomery County's recommendation will continue to be updated throughout this proceeding. In addition, Montgomery County has other concerns in this proceeding and there are likely to be some adjustments proposed by other intervenors that Montgomery County does not oppose. Thus, Montgomery County believes there is a likelihood that the proposed revenue requirement should be less than the amount indicated above.⁵³ (emphasis added).

1. Adjustment BCO-1: Reliability Plant Additions

Mr. Ostrander's Adjustment BCO-1 addresses Mr. VonSteuben's reliability plant additions adjustments RMA 1, 2, 3, and 4. Montgomery County's final position on this issue is summarized below:

a. Pepco Has Changed its Reliability Plant Additions Adjustment Approach in an Attempt to Justify An Excessive Rate Base

Pepco's change in its test year and reliability plant additions adjustments approach is yet another new attempt (along with its proposed TUM) to unjustly increase its rate base to the detriment of its captive customers, including Montgomery County, which should be rejected by the Commission. Mr. Ostrander explains the change in Pepco's approach to its reliability plant additions adjustments: 1) instead of using a test year ending December 31st as it has in recent rate cases, Pepco is using a test-year ending

⁵³ Ostrander Direct, p. 7, lines 11-17 (MC Ex. 25).

September 30, 2013 (with nine months of actual data through June 2013, plus three months of estimated data July to September 2013, which was subsequently updated to actual amounts); 2) previously Pepco only updated actual plant additions for three months subsequent to the test period through the date of hearings, but Pepco now proposes to update its reliability plant additions to actual amounts for a six-month period (October 2013 through March 2014) subsequent to the test period (RMA 2); 3) instead of proposing all post-hearing forecasted reliability plant additions as one single adjustment consistent with recent rate cases, Pepco now proposes two separate adjustments for post-hearing forecasted plant additions, RMA 3 for plant additions April to June 2014 (up to about three months subsequent to hearings), and RMA 4 for plant additions July to September 2014 (up to about six months subsequent to hearings).⁵⁴

b. Adjustment BCO-1 (Pepco RMA 1 – actual reliability plant additions for the test period ending September 30, 2013)

Mr. Ostrander does not oppose Pepco's RMA 1 which includes actual reliability plant additions through the test period ending September 30, 2013, particularly after Mr. VonSteuben's Rebuttal Testimony corrected the error in Pepco's filing that was identified by Mr. Ostrander.⁵⁵

c. Adjustment BCO-1 (Pepco RMA 2 – reliability plant additions for the six-month period subsequent to the test period October to March 2014, and through the approximate date of hearings)

Mr. Ostrander's Surrebuttal Testimony explains that he opposes part of the reliability plant additions included at Pepco RMA 2, and he removed the actual reliability plant additions for the months of January and February 2014, along with the forecasted

⁵⁴ *Id.*, at p. 28, lines 6-31.

⁵⁵ Ostrander Surrebuttal, p. 24, lines 6-10 (MC Ex. 26).

reliability plant additions for March 2014 (which had not been updated to actual amounts by Pepco at the time Mr. Ostrander filed his Surrebuttal Testimony). Mr. Ostrander continues to support this same position after Pepco updated its March 2014 plant additions to claimed actual amounts via its April 15, 2014 update to Reliability Project Ratemaking Adjustment No. 2 (“April 15, 2015 RMA 2 Update”) filing.. Mr. Ostrander’s Surrebuttal Testimony removed the actual plant additions for January through February 2014, plus the projected March 2014 plant additions, resulting in a reduction to rate base of \$35,470,000 and decreasing depreciation expense by \$592,000 (as included at Pepco’s RMA 2 at Schedule (WMV-R)-9, page 4 of 6).⁵⁶

Subsequent to Mr. Ostrander’s Surrebuttal Testimony, Pepco filed its updated RMA 2 actual net plant additions and related depreciation expense for March 2014.⁵⁷ However, Montgomery County continues to oppose these amounts for the months January to March 2014 via a revised adjustment to exclude net reliability plant additions of \$42,949,000 and decreasing depreciation expense \$690,000⁵⁸ - - and these updated amounts are included in the Comparison Chart included with this Brief.

⁵⁶ *Id.*, at p. 25, lines 1-4.

⁵⁷ Pepco’s April 15, 2015 RMA 2 Update.

⁵⁸ Pepco April 15, 2015 RMA 2 Update. Pepco’s Schedule (WMV-R)-9, page 4 of 6, provides the January to March 2014 net reliability plant additions of \$41,307,000 and the depreciation expense of \$690,000 to be removed by Montgomery County. However, Pepco does not provide the corresponding amounts of Accumulated Depreciation and CWIP for just the three-month period January to March 2014 at Sch. (WMV-R)-9, page 4 of 6, but instead Pepco only provided the six-month totals (October 2013 to March 2014) for these amounts at Sch. (WMV-R)-1, page 7 of 42. Thus, Montgomery County divided the January to March 2014 plant additions of \$41,307,000 (three month total) by the October 2013 to March 2014 plant additions of \$73,225,000 (six month total), to arrive at a ratio of 56% related to the three month amounts. To determine the three-month amount of Accumulated Depreciation, Montgomery County multiplied the 56% ratio by the \$612,000 total depreciation provision (Sch. (WMV-R)-1, page 7 of 42) to arrive at an amount of \$343,000 which is subtracted from the January to March 2014 retirements of \$2,468,000, and this equals Accumulated Depreciation of \$2,125,000. For CWIP, the total six-month CWIP of \$863,000 (Sch.(WMV-R)-1, page 7 of 42) is multiplied by the 56% ratio to arrive at January to March 2014 CWIP deduction of \$483,000. Thus, Montgomery County’s total adjustment consists of the January to March

d. Mr. Ostrander does not oppose Pepco's RMA 2 related to reliability plant additions for the three-month period subsequent to the test period (October to December 2013), consistent with his approach in prior Pepco rate cases.

Mr. Ostrander explains that he does not oppose Pepco's actual reliability plant additions for up to three months subsequent to the test period, and this is consistent with his approach in prior recent Pepco rate cases. However, Mr. Ostrander does oppose Pepco's new approach of including reliability plant additions up to six months subsequent to test period, and so he removed the claimed actual reliability plant additions for the months January to March 2014.

e. Mr. Ostrander does oppose Pepco's RMA 2 related to reliability plant additions for the three to six month period subsequent to the test period (January to March 2014)

Mr. Ostrander explained that it can be argued that accepting three months of post-test period reliability plant additions (October to December 2013) in this rate case and rejecting the additional three months of post-test period plant additions (January to March 2014) is consistent with prior Commission treatment, from the standpoint of a three-month cut-off period for post-test period plant additions. It could also be argued that accepting all actual plant additions (including the additional three months of January to March 2014) in this rate case up through the close of hearings is also consistent with prior Commission treatment, from the standpoint of the hearing date cut-off.⁵⁹

2014 Net Plant Additions of \$41,307,000, plus Accumulated Depreciation of \$2,125,000, less CWIP of \$483,000, for a total net adjustment of \$42,949,000.

⁵⁹ Ostrander Direct, p. 29, lines 12-21 (MC Ex. 25).

f. Mr. Ostrander opposes Pepco's RMA 2 for reliability plant additions for the period January to March 2014 because this violates the regulatory principles of "synchronization" and "matching"

Mr. Ostrander cites additional important reasons for not including reliability plant additions for the three to six month time period subsequent to the test period (for the three months January to March 2014), including: 1) it is a violation of the "synchronization" and "matching" regulatory principles; and 2) Pepco does not update for other significant adjustment and accounting issues.

Regarding the violation of the regulatory principles of "synchronization" and "matching", which are essentially the same regulatory principle, Mr. Ostrander states:

Violation of "synchronization" and "matching" regulatory principles – The synchronization and matching regulatory principles are both similar and support the concept that all impacts of an adjustment should be properly reflected in the revenue requirement to ensure proper, reliable, and consistent accounting and regulatory treatment to ensure fairness and equity to both customers and the utility company. It is not reasonable to reflect only part of an impact of an adjustment in revenue requirements, all impacts on revenues, expense, and rate base should be properly "synchronized" or "matched" for all adjustments or issues. The failure to properly synchronize or match all components of an adjustment might also be referred to as single-issue ratemaking. It appears the Commission may have concluded that accepting actual reliability plant additions up to three months beyond the test period will not significantly compromise the synchronization or matching principle. However, I believe there is a significant difference between not synchronizing or updating all revenue requirement components for six months (versus the current three months). Because the six month period represents a significant portion, and one-half, of the Company's fiscal year operations over which substantive changes in revenues, expenses, other rate base components, and Company decision-making can change. It is not reasonable to allow Pepco to recover capital investment costs for essentially an 18-month period, yet not allow offsetting revenues or all other potential offsetting benefits to customers for this additional six-month period. This leads to the next concern.⁶⁰

⁶⁰ *Id.*, at p. 30, lines 4-27.

- g. **Mr. Ostrander opposes Pepco's RMA 2 for reliability plant additions for the period January to March 2014 because the Company has not updated for other significant accounting issues and it only selectively updates those increasing costs that are favorable to its position of increasing customer rates**

Regarding the concerns related to Pepco's failure to update for other significant adjustment and accounting issues, whereby Pepco's selectively picks and chooses only those issues where costs are increasing and which are favorable to Pepco's position to justify increases in customer rates, Mr. Ostrander states:

Pepco does not update for other significant adjustment and accounting issues – Although Pepco typically updates its rate case expense to actual amounts up to the end of the hearing which is favorable to Pepco's interest. However, Pepco usually does not volunteer or provide updates beyond the test period for other financial data, Company decisions, and related adjustments that could lead to reductions in its revenue requirement. In fairness to customer interests, all significant issues should be subject to updating six months beyond the test period if additional plant additions are allowed. However, in the big picture, it is just not feasible (and not allowed by time constraints) for intervenors, the Commission, and even Pepco, to attempt to achieve constant updating throughout a rate case for all significant issues. The integrity of the rate case process is compromised when Pepco can selectively pick and choose which data it chooses to update, and allowing another three months of updated plant additions without allowing intervenors to obtain, evaluate or include other offsetting post test period adjustments is not reasonable nor fair.⁶¹

The Commission should reject Pepco's reliability plant additions for the post-test period months of January to March 2014.

- h. **Adjustment BCO-1 (Pepco RMA 3 and 4 – estimated reliability plant additions for the post-hearing six-month period April 2014 to September 2014)**

Mr. Ostrander removed all of Pepco's post-hearing estimated reliability plant additions for RMA 3 and 4, because these amounts are not known and measurable and

⁶¹ *Id.*, at p. 30, lines 29-40, and p. 31, lines 1-4.

this is consistent with all recent Commission rate case decisions which have excluded all estimated/forecasted post-hearing plant additions. Mr. Ostrander reduced rate base by \$44,527,000 and decreased depreciation expense by \$706,000, per Pepco's RMA 3 (April to June 2014) at Schedule (WMV-R)-1, page 8 of 42, and he also reduced rate base by \$34,965,000 and decreased depreciation expense by \$545,000, per Pepco's RMA 4 (July to September 2014) at Schedule (WMV-R)-1, page 9 of 42.⁶²

- i. **All of Pepco's estimated/forecasted reliability plant additions for the six month post-hearing period (RMA 3 and 4 for April to September 2014) are not consistent with prior Commission Orders and are not known and measurable**

Mr. VonSteuben stated that Pepco's post-hearing estimated/forecasted reliability plant additions per RMA 3 and 4 should be included in rate base because they are known and measurable and because this is consistent with policies set forth in prior Commission Orders.⁶³ Montgomery County disagrees with Mr. VonSteuben on all accounts.

Mr. Ostrander indicates that Mr. VonSteuben does not cite to any Commission Orders where post-hearing estimated/forecasted reliability plant additions have been included in rate base or have been considered to be known and measurable.⁶⁴ Also, contrary to Mr. VonSteuben's statements, the Commission has consistently denied forecasted post-hearing plant additions in Pepco's most recent rate case and for numerous other recent rate case, and the Commission has specifically excluded these amounts because they are NOT known and measurable.⁶⁵ Mr. Ostrander cites to numerous cases

⁶² Ostrander Surrebuttal, p. 25, lines 21-29 (MC Ex. 26).

⁶³ VonSteuben Rebuttal, p. 7, lines 12-24, p. 8 lines 1-19 (Pepco Ex. 13).

⁶⁴ Ostrander Surrebuttal, p. 27, lines 2-6 (MC Ex. 26).

⁶⁵ *Id.*, at p. 26, lines 11-20.

in recent years where the Commission has consistently disallowed post-hearing forecasted plant additions from the inclusion in rate base.⁶⁶

Also, Mr. Ostrander explains that the Commission has rejected the argument of “regulatory lag” as a reason to include projected post-hearing reliability plant additions in rate base.⁶⁷

Mr. Ostrander notes that Pepco has not provided any new or compelling substantive and meaningful arguments or documentation to justify departure from consistent prior Commission decisions that exclude projected post-hearing plant additions from rate base.⁶⁸

Finally, Mr. Ostrander also notes that the Commission has rejected post-hearing forecasted reliability plant additions because such projections have sometimes been inaccurate or unreliable, such as in the Commission’s decision in the recent Baltimore Gas and Electric Company rate case, Case No. 9299, with an order issued as recent as February 2013.⁶⁹

Consistent with this theme of concern regarding unreliable forecasts, Mr. Ostrander notes that Pepco’s forecasting process is not accurate because it overstated its April 2014 to September 2014 forecasted plant additions (for RMA 3 and 4) by \$12.9 million or 16%, and the RMA 3 forecast was overstated by 25% just by itself. Pepco provides no explanation for this significant change in forecasted amounts and there is no

⁶⁶ Ostrander Direct, p. 36, lines 25-34, and pp. 37-38 (MC Ex. 25).

⁶⁷ *Id.*, at p. 39, lines 1-9.

⁶⁸ Ostrander Surrebuttal, p. 36, lines 16-18 (MC Ex. 26).

⁶⁹ Ostrander Direct, p. 37, lines 14-24, and footnote 40 (MC Ex. 25).

indication that Pepco's forecasted plant additions will ever be representative of its actual plant additions.⁷⁰

Thus, consistent with its prior decisions, the Commission should reject all forecasted post-hearing reliability plant additions.

2. Adjustment BCO-2 – Adjust and Amortize Current Year Rate Case Expense Over Three Years

In the prior rate case Pepco proposed to write-off current rate case expenses in one-year, and Mr. Ostrander proposed a three-year amortization, and the Commission adopted Montgomery County's position to amortize these expenses over three years.⁷¹ Again, in this rate case, Pepco proposes to write-off its most recent estimated rate case expense of \$561,000⁷² in one year (which is a reduction from Pepco's original rate case expense of \$588,000). The Commission should adopt Mr. Ostrander's proposal again, to amortize the major category of rate case expense over three years, although some non-traditional rate case expenses included in this category should be amortized over five years (and other non-traditional rate case expenses should be removed from the revenue requirement).⁷³ Furthermore, the longer amortization period of three years is supported by the uncertainty regarding Pepco's next rate case after the pending Exelon acquisition.

The amount of Pepco's estimated rate case expenses, and the actual amount incurred through the latest date, are not adequately documented and Mr. Ostrander's

⁷⁰ Ostrander Surrebuttal, p. 27, lines 12-19, and p. 28, lines 1-10 (MC Ex. 26).

⁷¹ *In Re Potomac Electric Power Company*, Order No. 85724 at pp. 57-58 (2013).

⁷² VonSteuben Rebuttal, Schedule (WMV-R)-1, p. 23 of 42 (Pepco Ex. 13). This amount consists of some estimated and some actual amounts, although Pepco had failed to provide any updated costs for the record until Pepco's May 14, 2014 response to Commission Data Request No. 1 provided updated costs through April 29, 2014.

⁷³ Ostrander Surrebuttal, p. 30, lines 17-25, and p. 31, lines 1 to 10, and Exhibit BCO-1-S, Schedule A-6 (MC Ex. 26).

adjustment should be adopted. Mr. VonSteuben's Supplemental Direct Testimony proposed primarily estimated rate case expenses of \$588,000.⁷⁴ Then Mr. VonSteuben's Rebuttal Testimony claimed to update the rate case expense adjustment, but the only change he makes is a reduction of \$27,000 to the original estimated rate case expense, resulting in a revised estimated rate case expense of \$561,000.⁷⁵ However, the purpose for the revision of \$27,000 is not completely clear, and aside from this minor revision Mr. VonSteuben's rate case expense schedule looks the same as his January 24, 2014 Supplemental Direct Testimony, and he never provides an update of actual expenses incurred to date or any related supporting documentation for the record, and never provides actual expenses incurred to date for each consultant or category of expenses.⁷⁶

Based on Pepco's Rebuttal Testimony, Mr. Ostrander proposed a final rate case expense adjustment of \$388,700 (amortizing rate case expenses over 3 years) and a corresponding increase in the regulatory asset of \$197,700 - - and the Commission should adopt these corresponding adjustments for this rate case. Mr. Ostrander explains his adjustment in his Surrebuttal Testimony:⁷⁷

- 1) I am removing \$27,000 in rate case expense that is already reflected in the test period, and this amount has been identified for the first time in Mr. VonSteuben's Rebuttal Testimony.⁷⁸
- 2) I am continuing to disallow the \$100,000 of estimated outside legal expenses⁷⁹ and \$80,000⁸⁰ for the PWC storm audit expenses. If the Commission accepts the PWC storm audit expenses, then these amounts

⁷⁴ Ostrander Direct, p. 39, line 20 (MC Ex. 25). Also, Mr. VonSteuben's Supplemental Direct Testimony, Schedule (WMV-S)-1, p. 22 of 38.

⁷⁵ Ostrander Surrebuttal, p. 31, lines 21-24 (MC Ex. 26).

⁷⁶ *Id.*, at p. 31, lines 24-27, p. 32, lines 1-16.

⁷⁷ *Id.*, at p. 30, lines 14-25, and p. 31, lines 1-10.

⁷⁸ VonSteuben Rebuttal Testimony, RMA 18, Schedule (WMV-R)-1, page 23 of 42, line 16 (Pepco Ex. 13).

⁷⁹ *Id.*, at line 1.

⁸⁰ *Id.*, at line 9.

should be amortized over 5 years similar to my recommendation for the PWC overtime audit addressed in the next bullet point.

- 3) The PWC overtime audit expenses of \$210,000 should be amortized over 5 years because these are not traditional rate case expenses, and these types of costs are essentially non-recurring and will be incurred less routinely than rate case expenses.⁸¹
- 4) Instead of disallowing the estimated tax related work of \$33,000 related to the Private Letter Ruling (which is also not a traditional rate case expense and is essentially a non-recurring cost), I am now proposing to amortize this cost over 10 years, although no additional costs should be recovered over this threshold.⁸²

Through the date of May 13, 2014, subsequent to the hearings in this proceeding, Pepco had not provided its actual rate case expenses incurred to date by consultant or major category for inclusion in the record, these amounts were not included in Mr. VonSteuben's Rebuttal Testimony or Pepco's subsequent updated filings related primarily to RMA 2. Thus, Pepco has failed to meet a reasonable burden of proof to support its estimated rate case expenses with subsequent actual costs and supporting invoices and related documentation.

However, Commission Data Request Question No. 1 ("Commission DR 1") asked Pepco for a detailed summary of its actual rate case expenses through April 29, 2014, and related supporting documentation "that was not entered into the record in this case." (emphasis added). On May 14, 2014, Pepco provided its response to the Commission DR 1, only six business days before Initial Briefs are due in this proceeding. Pepco's response to Commission DR 1 shows the Company's latest proposed estimated rate case expense of \$561,000 (Mr. VonSteuben's Rebuttal Testimony), an actual amount of rate case expense incurred to date of \$277,000 per the response to Staff DR 4-15 (which

⁸¹ *Id.*, at line 8.

⁸² *Id.*, at line 5.

appears to have been provided on January 9, 2014, with no subsequent updates through the date of hearings), and the actual amount of rate case expense incurred through April 29, 2014 of \$607,000 as requested by the Commission DR 1.⁸³ The updated actual expenses of \$607,000 vary significantly from the prior amounts provided by Pepco up to that date, such as Pepco's total estimated expenses of \$561,000 and its prior updated actual expenses of \$277,000 provided in response to Staff DR 4-15.

Also, some of the categories of rate case expenses vary significantly and without any explanation or justification by Pepco. For example, Mr. Warren's original estimated rate case expense of \$33,000 has now increased to \$96,000⁸⁴ (an increase of \$63,000 and 190%) although Mr. VonSteuben's Rebuttal Testimony as late as March 27, 2014 never proposed to increase the estimated rate case expenses for Mr. Warren (and Pepco's April 15, 2015 RMA 2 Update, could have also updated these rate case expenses for each consultant or category).

The Commission should reject Pepco's updated actual expenses from Commission DR 1 and continue to adopt Mr. Ostrander's proposed rate case expense adjustment, because Montgomery County (and no other intervenor) never received any updates from Pepco regarding its request for similar updated rate case expenses provided in Commission DR 1. Most importantly, because the response to Commission DR 1 and related updated rate case expenses (and related invoices) were not provided until after hearings were completed, Montgomery County did not have the opportunity to specifically cross-examine Pepco witnesses on this new information, or to issue follow-up data requests regarding this new information. Technically, this information was not in

⁸³ Pepco Response to Commission DR 1, Attachment A, Page 1 of 2, line 18.

⁸⁴ *Id.*, at Attachment A, Page 1 of 2, line 5.

the record at the time that hearings were completed, and Montgomery County and the other intervenors will be unduly prejudiced by any late admission or consideration of this information by the Commission.

In fact, one of Mr. Ostrander's primary arguments opposing Pepco's estimated rate case expense was that the Company never provided adequate supporting documentation.⁸⁵ Pepco should not be allowed, after the hearings, to submit actual updated rate case expenses which were not provided on a timely basis to a pre-existing Staff DR 4-15, for which the most recent update only showed \$304,000 (as shown at Commission DR 1) of actual rate case expenses compared to the April 29, 2014 updated rate case expense of \$634,000 at Pepco's response to Commission DR 1. Pepco should not be rewarded for withholding previously requested rate case expense information, and then being able to update these expenses after the completion of hearings and avoid cross-examination and discovery on these matters. The Commission should reject Pepco's updated actual rate case expenses and adopt Mr. Ostrander's rate case expense adjustment.

3. Adjustment BCO-4: Remove Deferred Accenture Expenses

Pepco hired Accenture in 2012 and paid them \$1.9 million (\$401,000 was the Maryland portion of 2012 expenses removed in the prior rate case) on a PHI-wide basis to provide recommendations that would save Pepco upwards of \$7.4 million on a PHI-wide basis in 2013.⁸⁶ In the prior rate case, Mr. Ostrander recommended that the \$401,000 Accenture expense be removed, capitalized to a regulatory asset account, and deferred to expensing in the 2013 period in order to match the expenses with the

⁸⁵ Ostrander Surrebuttal, p. 31, lines 17-19, p. 32, lines 11-20 and 20, p. 33, lines 1-3 (MC Ex. 26).

⁸⁶ Ostrander Direct, p. 44, lines 12-15 (MC. Ex. 25).

anticipated cost savings at that time, and the Commission agreed with his proposed adjustment.⁸⁷

In this rate case, Pepco proposed Adjustment 11 to recover the \$401,000 of deferred Accenture expenses, and also removed \$200,000 of these costs from the deferred regulatory asset account in rate base (and \$201,000 remain in the deferred asset account in rate base).⁸⁸

Mr. Ostrander's adjustment proposes to disallow the 2012 deferred Accenture expenses of \$401,000, plus disallow the related 2013 Accenture expenses of \$126,830 related to this same matter (for a total expense adjustment of \$527,830).⁸⁹ Also, his adjustment removes the \$201,000 remaining in the deferred regulatory asset account.⁹⁰

Mr. Ostrander proposes to remove the Accenture expenses for a number of valid and substantiated reasons. First, it was not necessary for Pepco to pay Accenture close to \$2.0 million to produce these claimed savings, because most of the savings are common sense and typical prudent decisions that most companies make on a day-to-day basis, some of the cost savings are merely a recommendation to defer spending another year, and Pepco should have had the in-house expertise to make these sorts of routine decisions without the need to hire an outside consulting firm.⁹¹ Second, Pepco admits that some of the savings was not a real reduction of expense in 2013, but rather a decision to avoid a cost increase in 2013 by merely deferring these costs to 2014. For example, Pepco gives

⁸⁷ *Id.*, at p. 44, lines 15-19.

⁸⁸ *Id.*, at p. 45, lines 1-4.

⁸⁹ *Id.*, at p. 45, lines 6-8. Mr. Ostrander proposes to remove the total expense amount of \$527,830 because MC DR 3-11(d) asked Pepco to provide the total expenses related to the Accenture contract that was intended to produce savings in 2013, Pepco's response referred to OPC DR 9-1 Attachment D which identifies the amount of \$527,830 (and Pepco did not identify any Accenture expenses unrelated to producing the anticipated savings).

⁹⁰ *Id.*, at p. 45, lines 6-9.

⁹¹ *Id.*, at p. 45, lines 17-20, and p. 46, lines 1-3.

the example of a previously negotiated cost increase for vegetation management that was moved forward to 2014, but Pepco admits that is not a decrease to test year cost levels nor an ongoing savings because the 2013 vegetation management contract increase of 2.5% will be deferred and added to the 2014 increase of 2.5%, and result in a total increase of 5.5% in 2014.⁹²

Although Mr. Dickerson stated that he “generally disagree[d] with the opinion authored by Mr. Ostrander that the hiring of Accenture was imprudent,”⁹³ Pepco did not offer any meaningful rebuttal to Mr. Ostrander’s position and was never able to explain why Pepco was unable to make these same types of common sense cost savings decisions without paying an outside consultant.⁹⁴

4. Positions and Adjustments of Other Parties Adopted by Montgomery County

Montgomery County, after careful evaluation and consideration, has adopted some of the positions and adjustments of other parties in this proceeding, which will be addressed in this section of the Brief. All proposed positions and adjustments are reflected in the Updated Comparison Chart (MC Initial Brief Attachment 1) that shows Montgomery County’s final position reflecting Mr. Ostrander’s recommendations, plus adjustments of other parties that Montgomery County is adopting post-hearing.

Those adjustments and issues of other parties that Montgomery County believes are reasonable and should be adopted by the Commission are summarized below. Although Montgomery County does not necessarily oppose additional intervenor

⁹² *Id.*, at p. 46, lines 5-12.

⁹³ Volume II, Tr. p. 278:13-15.

⁹⁴ Ostrander Surrebuttal, p. 34, lines 10-21, p. 35, lines 1-35, and p. 36, lines 1-4 (MC Ex. 26).

adjustments that are not listed below, it has attempted to narrow these issues for purposes of the Brief and based on materiality of the issues. In addition, because Montgomery County did not sponsor a Rate of Return witness or an engineering witness, the adjustments proposed by these expert witnesses are also reflected in the adjustments and issues adopted by Montgomery County below.

a. Rate of Return – Adopt OPC Witness Mr. Woolridge’s ROR of 7.31%

Montgomery County finds the arguments of Mr. Woolridge to be compelling and supportive of an overall ROR of 7.31%.⁹⁵

Mr. Woolridge summarizes the problems with Pepco’s ROR witness Mr. Hevert’s position on ROR, and the reasons supporting his recommendation, including the following:

- 1) Mr. Hevert’s DCF cost rate has been inflated by ignoring fully 1/3 of his DCF results because he believes that the numbers are too low, relying solely on the overly optimistic and upwardly biased long-term EPS growth rate estimates of Wall Street analysts and *Value Line* (including a multi-stage DCF model that uses a projected GDP growth rate of 5.67% which is about 100 basis points above the GDP growth rate trends of the last couple decades and the projected GDP growth rates of major government agencies and professional forecasters).⁹⁶
- 2) Mr. Hevert’s market risk premium in his CAPM analysis is based on expected EPS growth rates of more than ten percent which is about twice the projected GDP growth rate.⁹⁷
- 3) Mr. Hevert’s RP approach uses historic authorized ROEs and Treasury yields. The risk premium is overstated as a result of a methodology error that applies the risk premium to a projected and not a historic Treasury yield. More importantly, the authorized ROEs used by Mr. Hevert are not necessarily applicable to Pepco.⁹⁸

⁹⁵ Woolridge Surrebutal, p. 20, line 1 (OPC Ex. 26).

⁹⁶ *Id.*, at p. 21, lines 12-20.

⁹⁷ *Id.*, at p. 22, lines 1-3.

⁹⁸ *Id.*, at p. 22, lines 11-15.

- 4) The earned ROEs for the companies in the Electric and Hevert Proxy Groups, in conjunction with the strong stock market performance of the utility sector in 2014, provides evidence that Mr. Woolridge's 9.0% ROE recommendation for Pepco meets investors' expectations.⁹⁹

Therefore, Montgomery County adopts Mr. Woolridge's proposed ROE and overall ROR for this rate case.

b. Pension and OPEB Expense – Adopt OPC Witness Ms. Ramas' Adjustment to Reduce Pension and OPEB Expense

Montgomery County supports the adjustments of Ms. Ramas to reduce Pepco's pension expense by \$3,010,000 and OPEB expense by \$961,000, and these are the same adjustments proposed in both Ms. Ramas Direct and Surrebuttal Testimony.¹⁰⁰

Ms. Ramas recommends that the pension and OPEB expense included in Pepco's filing be updated to reflect 2014 actuarial projections of provided by Towers Watson¹⁰¹ because the projections incorporate the impacts of known and measurable changes that occurred in 2013 regarding plan assets, pension plan experience, and the known actuarial assumptions Pepco was already required to select for the 2014 plan year.¹⁰² Ms. Ramas concludes that the 2014 actuarial projections prepared by Towers Watson are more likely to be reflective of the rate effective period than the 2013 pension expense used in Pepco's pension adjustment and the 2014 OPEB expense projections from the September 8, 2013 actuarial projections used in Pepco's OPEB adjustment.¹⁰³ In response to Mr. VonSteuben's Rebuttal Testimony which explains that Pepco relies on a Towers Watson

⁹⁹ *Id.*, at p. 22, lines 20-23.

¹⁰⁰ Ramas Surrebuttal, OPC Exhibit DMR-SR2 and related schedules, Schedule 12 for Pension Expense and Schedule 13 for OPEB Expense (OPC Ex. 28).

¹⁰¹ Towers Watson is Pepco's retirement plan actuarial consultant.

¹⁰² Ramas Surrebuttal, p. 26, lines 22-25 and p. 27, lines 1-3 (OPC Ex. 28).

¹⁰³ *Id.*, at p. 27, lines 3-7.

projection from the 2013 actuarial report, Ms. Ramas explains that she used the most recent Towers Watson projection as of January 10, 2014 that includes the most recent impacts that will be reflective of a rate effective period.¹⁰⁴ Ms. Ramas explains the distinction between the facts regarding Pepco's position and the OPC's position regarding pension and OPEB expense adjustments in Case No. 9286 to further justify her proposed adjustments.¹⁰⁵

Therefore, Montgomery County adopts Ms. Ramas adjustment for pension and OPEB expense in this rate case.

c. SERP Expense – Adopt OPC Witness Ms. Ramas' Adjustment to Reduce SERP Expense

Montgomery County supports the adjustment of Ms. Ramas to reduce Pepco's SERP expense by \$3,563,000.¹⁰⁶ Ms. Ramas proposes to exclude SERP expenses because ratepayers are already funding the qualified pension plan costs in customer rates, the SERP provides benefits to select executives that are greater than the benefits they receive through participation in the qualified pension plans (including the 401(K) plan), and the SERP allows for retirement benefits that exceed the IRS limitations on qualified pension plans.¹⁰⁷ Ms. Ramas explains that if the Company wishes to provide SERP to its executives then shareholders should fund the cost of these additional benefits and not ratepayers.¹⁰⁸ In Order 85724 from PEPCO's last rate case, Case No. 9311, the Commission allowed 50% of the SERP expense in rates although the Commission stated

¹⁰⁴ *Id.*, at p. 28, lines 9-21.

¹⁰⁵ *Id.*, at p. 29, lines 18-30, p. 30, and p. 31, lines 1-6.

¹⁰⁶ *Id.*, at OPC Exhibit DMR-SR2 and related Schedule 14.

¹⁰⁷ Ramas Direct, p. 43, lines 10-16 (OPC Ex. 27).

¹⁰⁸ *Id.*, at p. 43, lines 16-20.

it would "...revisit this issue in Pepco's next base rate case to determine what, if any, of these costs provide any benefit to ratepayers".¹⁰⁹ In this proceeding, Ms. Ramas proposes to remove 100% of the SERP expense, and Montgomery County concurs.

Ms. Ramas raises legitimate concerns regarding the method and conclusion of Pepco's sampling of utility company data and related to SERP expense,¹¹⁰ and she indicates that SERP expense has not been allowed to be recovered in customer rates in Pepco's District of Columbia jurisdiction since 1995.¹¹¹

Montgomery County concurs with Ms. Ramas adjustment to remove 100% of SERP expenses from this rate case.

d. Ratification Bonus – Adopt OPC Witness Ms. Ramas' Adjustment to Reduce the Ratification Bonus Expense and the Related Rate Base Component

Montgomery County supports the adjustment of Ms. Ramas to reduce Pepco's one-time ratification bonus expense by a total amount of \$366,000, and because Pepco's Rebuttal Testimony agreed to amortize and remove part of these expenses, Ms. Ramas expense adjustment is now reduced to \$92,000 and the rate base component is \$320,000.¹¹² These one-time costs should be removed in their entirety from the rate case (and not amortized) because they were paid in November 2012 and this is a known and measurable non-recurring expense and is not a projected recurring cost.¹¹³

Montgomery County concurs with Ms. Ramas adjustment to remove the one-time ratification bonus from this rate case.

¹⁰⁹ *Id.*, at p. 43, lines 21-24, p. 44, lines 1-3.

¹¹⁰ Ramas Surrebuttal, p. 32, lines 22-25, and p. 33, lines 1-23.

¹¹¹ *Id.*, at p. 33, lines 23-25.

¹¹² *Id.*, at p. 25, lines 11-16, and OPC Exhibit DMR-SR2 and related Schedule 11.

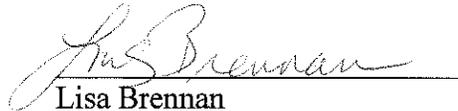
¹¹³ *Id.*, at p. 25, lines 5-8.

IV. CONCLUSION

Montgomery County respectfully requests that Pepco's request for a proposed rate increase should be denied and Pepco should be required to reduce its rates by an amount of \$1.5 million.

Respectfully submitted,

MONTGOMERY COUNTY, MARYLAND



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POTOMAC ELECTRIC POWER COMPANY
Montgomery County Initial Brief - Attachment 1
Test Period - Twelve Months Ended September 30, 2013

	PEPCO			STAFF			OPC			Montgomery County ¹			AOBA ¹		
	Rate Base	Operating Income	Revenue Requirement	Rate Base	Operating Income	Revenue Requirement	Rate Base	Operating Income	Revenue Requirement	Rate Base	Operating Income	Revenue Requirement	Rate Base	Operating Income	Revenue Requirement
	\$ 1,277,688	\$ 86,250	\$ 25,624	\$ 1,277,688	\$ 86,250	\$ 19,932	\$ 1,277,688	\$ 86,250	\$ 12,097	\$ 1,277,688	\$ 86,250	\$ 12,259	\$ 1,277,688	\$ 86,250	\$ 30,444
Unadjusted Amounts															
Uncontested Company-Proposed Rate-making Adjustments															
5 Annualization of Case No. 9311 Depreciation Rates	1,131	949	(1,474)	1,131	949	(1,486)	1,131	949	(1,486)	1,131	949	(1,486)	1,131	949	(1,486)
6 Removal of AMI Meters Installed Post December 31, 2011	(43,670)	1,723	(8,865)	(43,670)	1,723	(8,423)	(43,670)	1,723	(8,423)	(43,670)	1,723	(8,423)	(43,670)	1,723	(8,050)
12 Annualization of MD Case No. 9311 Rate Increase	-	10,654	(18,269)	-	10,654	(18,269)	-	10,654	(18,269)	-	10,654	(18,269)	-	10,654	(18,269)
15 Reflection of Uncollectible Write-Offs	-	(820)	1,406	-	(820)	1,406	-	(820)	1,406	-	(820)	1,406	-	(820)	1,406
16 Amortization of MD Case No. 9311 Rate Case Expense	-	135	(231)	-	135	(231)	-	135	(231)	-	135	(231)	-	135	(231)
17 Amortization of MD Case No. 9214 Regulatory Expense	-	(1,113)	194	-	(1,113)	194	-	(1,113)	194	-	(1,113)	194	-	(1,113)	194
20 Annualization of Wage Increases	-	(1,759)	3,016	-	(1,759)	3,016	-	(1,759)	3,016	-	(1,759)	3,016	-	(1,759)	3,016
21 Reflection of Employee Health & Welfare Cost Increases	-	(341)	565	-	(341)	565	-	(341)	565	-	(341)	565	-	(341)	565
22 Reflection of 3-Year Average A.P. Costs	-	(371)	636	-	(371)	636	-	(371)	636	-	(371)	636	-	(371)	636
23 Reflection of 3-Year AVG Auto & General Claim Payments	-	(284)	487	-	(284)	487	-	(284)	487	-	(284)	487	-	(284)	487
24 Exclusion of Institutional & Promotional Ad Expense	-	1,022	(1,753)	-	1,022	(1,753)	-	1,022	(1,753)	-	1,022	(1,753)	-	1,022	(1,753)
25 Exclusion of Executive Incentive Costs	-	2,326	(3,989)	-	2,326	(3,989)	-	2,326	(3,989)	-	2,326	(3,989)	-	2,326	(3,989)
26 Exclusion of 50% Employee Activity Costs	-	42	(72)	-	42	(72)	-	42	(72)	-	42	(72)	-	42	(72)
27 Inclusion of Commission Authorized Interest Expense	-	(202)	346	-	(202)	346	-	(202)	346	-	(202)	346	-	(202)	346
Subtotal Adjustments before AFUDC Offset	(42,539)	12,961	(26,003)	(42,539)	12,961	(27,777)	(42,539)	12,961	(27,553)	(42,539)	12,961	(27,553)	(42,539)	12,961	(26,163)
Contested Company-Proposed Rate-making Adjustments															
1 Annualization of Test Year Reliability Plant Closings	3,547	(2,732)	5,187	3,125	(2,721)	5,074	12,176	(2,732)	3,180	11,676	5,129	5,129	2,683	(2,764)	5,148
2 Post Test Year Reliability Closings (Inn hearing date)	76,206	(1,412)	12,771	76,208	(1,412)	12,366	73,904	(1,412)	11,676	33,257	5,063	5,063	-	-	-
3 Post Test Year Reliability Closings (Inn rate order)	44,527	(421)	6,769	-	-	-	-	-	-	-	-	-	-	-	-
4 Post Test Year Reliability Closings (Inn 9/30/2014)	34,965	(325)	5,308	-	-	-	-	-	-	-	-	-	-	-	-
7 Reflection of Legacy Meters Retired Post December 31, 2011	(9,440)	(1,820)	8,708	41,121	(1,820)	8,487	(10,069)	(1,820)	(1,261)	41,121	(1,820)	8,275	41,121	(1,820)	8,861
8 Reflection of 2012 NOL Account	-	-	(1,282)	(9,440)	(2,233)	3,610	(1,851)	(2,189)	3,543	(9,440)	(2,233)	3,618	(9,440)	(2,233)	3,584
9 Annualization of 2012 Major Storm Amortizations	(1,691)	(2,233)	3,601	(1,691)	(2,233)	3,610	(1,691)	(2,233)	3,610	(1,691)	(2,233)	3,618	(1,691)	(2,233)	3,594
10 Amortization of 2013 Major Storm Preparation Cost	501	(386)	(986)	-	-	-	501	(386)	(986)	-	-	-	-	-	(649)
11 Reflection of 2012 Accrual Costs	201	(239)	437	201	(239)	436	-	-	410	201	(239)	410	201	(239)	438
13 Annualization of 2013 Pension Expense	60	(35)	60	-	-	-	-	-	410	60	(35)	410	60	(35)	60
14 Reflection of 2014 OPEB Expense Reduction	(1,879)	(3,222)	(3,222)	(1,879)	(3,222)	(3,222)	-	-	(3,018)	(1,879)	(3,222)	(3,018)	(1,879)	(3,222)	(3,222)
18 Reflection of Current Rate Case Costs	(335)	(574)	574	(335)	(574)	574	-	-	2,452	(335)	(574)	2,452	(335)	(574)	600
19 Reflection of HB1090 Compliance Costs	(186)	(83)	319	-	-	-	-	-	188	(186)	(83)	319	-	-	(186)
28 Reflection of Vegetation Management in Rate Effective Period	803	(1,377)	(1,377)	-	-	-	-	-	803	(1,377)	(1,377)	-	-	-	(1,869)
Additional Intervenor-Proposed Rate-making Adjustments:															
Remove Accrual Expense Related to VM Savings	-	-	-	-	-	-	-	-	(484)	-	-	(410)	-	-	-
Remove Accrual Expense Incurred in 2013	-	-	-	-	-	-	-	-	77	-	-	(132)	-	-	-
Remove SERP Expense - Staff 50% - OPC 100%	-	-	-	-	-	-	-	-	2,125	-	-	(3,644)	-	-	-
Synchronization of Rate-making Adjustments															
29 Pro Forma Impact to Cash Working Capital Allowance	(4,577)	(2,585)	4,433	(4,631)	(2,669)	4,572	(7,207)	(4,237)	7,266	(4,631)	(2,669)	7,000	(4,738)	(2,028)	(651)
30 Tax Effect of Proforma Interest Expense	-	90	(154)	-	448	(768)	-	(322)	552	-	(108)	182	-	239	(410)
31 AFUDC Synchronization	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rounding Error															
Computational issues with adjustment for proposed rate of return	-	-	-	-	-	-	-	-	1	-	-	-	-	-	-
Adjustment to reflect intervenor proposed rate of return	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Updated and/or Additional Company-Proposed Adjustments															
32 Reflection of Revised MCFET Lag Day	(6,857)	163	(908)	(6,687)	-	(873)	(6,687)	-	(837)	(6,687)	-	(838)	(6,687)	-	-
33 Amortization of Local Union 1600 Contract Ratification Bonus	320	96	(236)	320	163	(238)	-	218	(374)	320	163	(238)	-	-	-
34 Miscellaneous Expense Adjustments	-	96	(165)	-	96	(165)	-	100	(171)	-	96	(165)	-	-	-
Total Revenue Requirement	\$ 1,414,152	\$ 80,185	\$ 37,410	\$ 1,333,693	\$ 92,320	\$ 15,731	\$ 1,271,734	\$ 95,860	\$ (5,127)	\$ 1,290,303	\$ 95,216	\$ (1,538)	\$ 1,265,546	\$ 93,142	\$ 11,992
Gross Up Factor	58.3163%														
Capital Structure															
Long Term Debt	50.82%	5.65%	2.85%	50.82%	5.66%	2.88%	50.82%	5.66%	2.88%	51.11%	5.96%	2.89%	50.75%	5.97%	3.05%
Common Stock	48.18%	10.25%	5.04%	48.18%	9.62%	4.79%	48.18%	9.00%	4.43%	48.89%	9.36%	4.43%	48.24%	9.45%	4.65%
Proposed Rate of Return	7.9%	10.25%	5.04%	7.81%	9.62%	4.79%	7.81%	9.00%	7.30%	7.31%	7.31%	7.31%	7.31%	7.31%	7.68%

¹ AOBA's position is based on their pre-filed Direct Testimony. Note that there are adjustments proposed by other intervenors in this proceeding that AOBA does not oppose which will be reflected in an exhibit to its Initial Brief.
² These revisions reflect Montgomery County's updated revenue requirements.

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of May, 2014, a copy of the foregoing Initial Brief of Montgomery County, Maryland was served electronically and mailed first-class, postage prepaid, on all parties on the Service List in Case 9336:

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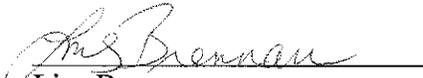
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