

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

**ORDER**

**April 24, 2023**

**GD-2022-01-E, IN THE MATTER OF THE COMPLAINT AND INVESTIGATION INTO  
POTOMAC ELECTRIC POWER COMPANY’S COMMUNITY RENEWABLE ENERGY  
FACILITY PRACTICES, and**

**FORMAL CASE NO. 1171, IN THE MATTER OF THE INVESTIGATION INTO  
COMMUNITY RENEWABLE ENERGY FACILITY PRACTICES IN THE DISTRICT,  
Order No. 21600**

**I. INTRODUCTION**

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) renders a decision on the legal issues raised in the Joint Complaint and Petition for an Investigation into Pepco’s Community Renewable Energy Facility Practices (“Joint Petitioners’ Complaint” or “Complaint/Petition”) filed by the Office of the People’s Counsel for the District of Columbia (“OPC” or “Office”) and the District of Columbia Government’s (collectively, “Joint Petitioners”). We find that the Potomac Electric Power Company (“Pepco” or “Company”) is currently in violation or has been in violation of relevant laws and regulations as identified in Counts 1, 2, and 3 of the Joint Petitioners’ Complaint.<sup>1</sup> The Commission: (1) directs Pepco to use only the revenue grade meters installed by the Community Renewable Energy Facility (“CREF”) owners or developers to determine a CREF’s electricity generation; (2) directs that, absent a contractual right or some other legal basis to maintain its production meters on private property, Pepco remove its production meters within 45 days of this Order and file a report to the Commission 15 days thereafter confirming that the meters have been removed; (3) directs the Commission Staff to issue a Notice of Inquiry (“NOI”) within 15 days of the date of this Order soliciting comments from interested persons on possible amendments to Commission regulations governing CREFs; (4) directs Pepco to file a report within 20 days of the date of this Order in accordance with paragraphs 15, 25, and 28, with a 15-day comment period thereafter; (5) directs the Commission Staff to appoint an auditor to oversee a metering and billing reconciliation process within 120 days of the date of this Order; and (6) directs Pepco to conduct a reconciliation of all CREF credits issued starting from May 8, 2015, the date of the promulgation of the Commission’s CREF regulations, within 90 days from the appointment of the Commission auditor in accordance with the procedures set forth herein.

---

<sup>1</sup> At this time, we do not see a violation of law in Counts 4-7.

## II. BACKGROUND

2. The District of Columbia (“District”) enacted the Community Renewable Energy Act of 2013 (“CREA”), which permits, *inter alia*, Community Net Metering (“CNM”) and provides an opportunity for District residents to benefit from renewable energy production.<sup>2</sup> On March 23, 2022, Joint Petitioners filed a Joint Complaint and Petition for an Investigation into Pepco’s CREF Practices.<sup>3</sup> On May 9, 2022, after requesting and being granted additional time to respond to the petition, Pepco responded to the Petition.<sup>4</sup> Numerous community comments supported the Joint Petitioners’ request for an investigation.<sup>5</sup> On May 20, 2022, the Joint Petitioners filed a Motion to Convene a Pre-Hearing Conference,<sup>6</sup> to which Pepco later filed its opposition.<sup>7</sup> Solar United Neighbors of D.C. filed a Motion for Leave to Intervene<sup>8</sup> and a Letter in Support of the Joint Petition.<sup>9</sup>

3. By Order No. 21174, the Commission, among other things: (1) granted the Complaint/Petition for an investigation into Pepco’s CREF practices; (2) opened *Formal Case No. 1171*; (3) held in abeyance the Joint Petitioners’ Motion for a Pre-Hearing Conference at that time; and (4) invited the Joint Petitioners and Pepco to file initial and reply legal briefs before the Commission would rule on the merits. Additionally, the Commission directed the Commission Staff to prepare a proposed Scope of Work for an audit of Pepco’s CREF practices based on the Commission’s opinion that “the pleadings reflect that Pepco’s process is less than clear about whether CREF accounts have been properly credited as Pepco claims” and that “[t]his may be a simple accounting issue that can be resolved through an audit.”<sup>10</sup> Lastly, the Commission stated

---

<sup>2</sup> 60 D.C. Reg. 015138-015144 (November 1, 2013); *See also* D.C. Code § 34-1518.01 (2013).

<sup>3</sup> *GD-2022-01-E, In the Matter of the Complaint and Petition for an Investigation into Potomac Electric Power Company’s Community Renewable Energy Facility Practices* (“GD-2022-01-E”), The Office of the People’s Counsel for the District of Columbia and the District of Columbia Government’s Joint Complaint and Petition for Investigation into Potomac Electric Power Company’s Community Renewable Energy Facility Practices (“Complaint/Petition”), filed March 23, 2022.

<sup>4</sup> *GD2022-01-E, Potomac Electric Power Company’s Response to the Office of the People’s Counsel for the District of Columbia’s and the District of Columbia Government’s Joint Complaint*, filed May 9, 2023 (“Pepco’s Answer”).

<sup>5</sup> *See, e.g., GD-2022-01-E, Comments and Acknowledgment*, filed June 1, 2022.

<sup>6</sup> *GD-2022-01-E, Joint Petitioner’s Motion for a Pre-Hearing Conference*, filed May 20, 2022.

<sup>7</sup> *GD-2022-01-E, Opposition of Potomac Electric Power Company to the Joint Petitioners’ Motion for a Pre-Hearing Conference*, filed June 1, 2022.

<sup>8</sup> *GD-2022-01-E, Solar United Neighbors of D.C.’s Motion for Leave to Intervene*, filed May 10, 2022.

<sup>9</sup> *GD-2022-01-E, Solar United Neighbors of D.C.’s Letter in Support of the Joint Petition*, filed June 7, 2022.

<sup>10</sup> *Formal Case No. 1171, In the Matter of the Investigation into Community Renewable Energy Facility Practices in the District* (“*Formal Case No. 1171*”); and *GD-2022-01-E, Order No. 21174*, ¶ 18, rel. June 30, 2022 (“*Order No. 21174*”).

that while it reviews the legal questions, it is unclear what, if any, additional process will be required or if formal parties would be appropriate in this matter. It, therefore, held in abeyance any requests for intervention.<sup>11</sup>

4. Initial Briefs were filed by Pepco and Joint Petitioners on July 27, 2022, and July 29, 2022, respectively.<sup>12</sup> Reply Briefs were filed on August 11, 2022.<sup>13</sup>

### III. DISCUSSION

5. On March 23, 2022, the Joint Petitioners filed their Complaint, alleging that Pepco has committed, or continues to commit, seven violations of District law and/or Commission regulations:

- I. Pepco violated D.C. Code § 34-1518 (b)(5) and 15 DCMR § 907.4 (May 8, 2015) by installing Pepco's own production meters on CREFs;
- II. Pepco violated D.C. Code §§ 906.4 and 907.9 by failing to account for and remit unsubscribed energy produced by CREFs;
- III. Pepco is violating D.C. Code §§ 34-1518 (b)(5)(I)-(J) and 15 DCMR §§ 907.5-907.6 by failing to timely and accurately provide CREF Subscribers with Community Net Metering Credits;
- IV. Pepco may be violating D.C. Code § 34-1518 (b)(5)(K) by failing to consistently account for carryover credits;
- V. Pepco has violated 15 DCMR §§ 304.16 (b), 304.17, and 304.18 through 304.21 by failing to timely report billing errors related to CREFs;
- VI. Pepco has violated 15 DCMR § 304.2 by billing CREF systems for Net Energy Metering ; and
- VII. Pepco's actions constitute neglect, waste ratepayer resources, and frustrate the ability of the District to achieve its Carbon Reduction Goals.<sup>14</sup>

---

<sup>11</sup> *Formal Case No. 1171*, Order No. 21174, ¶19.

<sup>12</sup> *Formal Case No. 1171*, Initial Brief of Potomac Electric Power Company, filed July 27, 2022 ("Pepco's Initial Brief"); Initial Brief of the Office of the People's Counsel for the District of Columbia and the District of Columbia Government in Response to Order No. 21174 ("Joint Petitioners' Initial Brief").

<sup>13</sup> *Formal Case No. 1171*, Reply Brief of Potomac Electric Power Company, filed August 11, 2022; Reply Brief of the Office of the People's Counsel for the District of Columbia and the District of Columbia Government in Response to Order No. 21174 ("Joint Petitioners' Reply Brief"), filed August 11, 2022.

<sup>14</sup> *GD-2022-01-E*, Complaint/Petition.

We discuss the allegations , Pepco's response, the briefs, and our decision below.

**COUNT 1: THE COMMISSION SHOULD FIND AS A MATTER OF LAW THAT PEPSCO VIOLATED DISTRICT OF COLUMBIA LAW BY INSTALLING ITS OWN PRODUCTION METERS ON CREFS AND ILLEGALLY USING ITS METERS TO DETERMINE THE AMOUNT OF ELECTRICITY GENERATED EACH MONTH BY A CREF FOR BILLING PURPOSES.**

6. **Joint Petitioners:** Joint Petitioners cite D.C. Code § 34-1518 (b)(5)(H), which requires that the amount of electricity generated each month to be determined by a revenue quality production meter installed and paid for *by the owner of the CREF* (emphasis added).<sup>15</sup> According to Joint Petitioners, contrary to District of Columbia law, Pepco refuses to grant an Authorization to Operate ("ATO") until the CREF has installed a Pepco-owned meter.<sup>16</sup> Joint Petitioners have requested that the Commission direct Pepco to remove its proprietary production meters.<sup>17</sup> Joint Petitioners also state that it is unclear who has been paying for the proprietary Pepco production meters.<sup>18</sup>

7. The Joint Petitioners assert that if the amount of electricity generated by a CREF is calculated from the wrong production meter – a Pepco-installed production meter – then the monetary value of the subscribed and unsubscribed energy associated with that determination will be tainted, and the credits allocated therefrom will also be tainted, including any calculation of carryover credits. Therefore, if the credits are tainted, then the electricity bills of subscribers and payments to CREF owners will be similarly tainted.<sup>19</sup> Joint Petitioners state that "[t]he problem is compounded when wrong generation data is being fed into an opaque billing system that has not been programmed to process the level of unsubscribed energy payments and subscribed energy bill credits created by CREFs."<sup>20</sup>

8. Joint Petitioners also assert that even if the Commission reads the CREF metering laws in conjunction with other laws related to meters, that does not change the plain meaning of the CREF metering laws, and that the Commission's rulemakings have upheld the plain meaning of the CREA statute.<sup>21</sup> Joint Petitioners aver that Pepco has improperly refused to comply with the law because it believes that doing so would undermine its cybersecurity protections. Joint

---

<sup>15</sup> Joint Petition at 17.

<sup>16</sup> Joint Petition at 18.

<sup>17</sup> Joint Petition at 21.

<sup>18</sup> Joint Petitioners' Initial Brief at 8.

<sup>19</sup> Joint Petitioners' Initial Brief at 7.

<sup>20</sup> Joint Petitioners' Initial Brief at 7.

<sup>21</sup> Joint Petitioners' Initial Brief at 7-9.

Petitioners aver that Pepco's cybersecurity concerns are of its own making because it unilaterally required connecting production meters to its billing system for its own convenience rather than developing an automated and separate system such as a cloud platform where the CREF meter's generation data could be uploaded before incorporation into Pepco's billing system in a manner compliant with Pepco's cybersecurity standards.<sup>22</sup> Joint Petitioners also stress that "every single CREF in service right now has a Commission-authorized meter to participate in the RPS."<sup>23</sup>

9. **Pepco:** Pepco does not deny that it requires CREFs to use Pepco's meters. However, Pepco argues that the statutory provision on which Joint Petitioners rely must be read in conjunction with D.C. Code § 34-303, which prohibits the use of meters that the Commission has not approved, and D.C. Code § 34-1552 (c)(2), which requires that all submetering equipment be subject to the same rules and standards established by the Commission for accuracy testing and record keeping of meters installed by the electric utilities. Pepco states that, as far as it is aware, the Commission has not approved any third-party CREF production meters to be used on Pepco's distribution system.<sup>24</sup> Regarding the requirement for uniform standards, Pepco states that it can control the testing, maintenance, accuracy, and operations of Pepco's meters but does not have such ability or control over third-party meters.<sup>25</sup> Moreover, Pepco asserts that only Pepco's advanced metering infrastructure ("AMI") can connect with Pepco's AMI communications systems due to cybersecurity concerns and technical barriers.<sup>26</sup> In order to harmonize the language in D.C. Code § 34-1518 (b)(5)(H) with the requirements in D.C. Code § 34-303 (c) and provide appropriate consumer protections from the use of accurate meters as well as to maximize cybersecurity, Pepco argues that CREA should be revised to make the utility production meter the standard for CREF generation measurement.<sup>27</sup>

10. **Decision.** D.C. Code § 34-1551 (10) defines submetering equipment as "equipment used to measure the actual electricity or natural gas usage in any nonresidential (*i.e.*, commercial) rental unit when the equipment is not owned or controlled by the electric or gas utility serving the building in which the nonresidential unit is located." Neither the law nor our regulations permit submetering of residential units. Even if they did, submeters (whether for residential or commercial use) measure individual consumption of the tenant not electricity generation for the CREF. That being the case, the statutory provisions relied on by Pepco are inapplicable.

---

<sup>22</sup> Joint Petitioners' Initial Brief at 13.

<sup>23</sup> Joint Petitioners' Initial Brief at 21.

<sup>24</sup> Pepco's Answer at 15 citing *Formal Case No. 1019*, Order No. 12989, ¶ 7, rel. November 13, 2003.

<sup>25</sup> Pepco's Answer at 16-17.

<sup>26</sup> Pepco's Answer at 17.

<sup>27</sup> See Pepco's Initial Brief at 7: "Given all of the foregoing, the Company submits that, in order to harmonize the language in D.C. Code Section 34-1518 (b)(5)(H) with the requirements in D.C. Code Section 34-303 (c) and provide appropriate consumer protections from the use of accurate meters as well as to maximize cyber security, CREA should be revised to make the utility production meter the standard for CREF generation measurement."

11. Second, with regard to Pepco's cybersecurity concerns, we cannot accommodate them by hunting for ambiguities where there are none in an attempt to rewrite the statute through interpretation. In interpreting a statute, it is axiomatic that the Commission look to the language of the statute first; and if the words are clear and unambiguous, then the Commission must give effect to the plain meaning.<sup>28</sup> Particularly when the language used is "very clear," the Commission is bound to give literal effect to the meaning of the statute or rule without consulting other indicia of intent or meaning.<sup>29</sup>

12. The CREF metering statute plainly states that the amount of electricity generated for allocation as subscribed or unsubscribed energy must be determined by a revenue quality production meter installed and paid for by the CREF owner. Pepco is required to read that production meter to determine the amount of electricity generated from that CREF to make the required payments and billing credits.<sup>30</sup> It is undisputed on the record before us that the electricity generated by the CREFs was determined by production meters installed by Pepco, not the CREF owners.<sup>31</sup> Therefore, we find that Pepco's actions violate D.C. Code § 34-1518 (b)(5)(H).

13. On a related note, Pepco argues that only its AMI can be used on its system because no other production meter has been approved for use by the Commission as required by D.C. Code § 34-303 (c). However, D.C. Code § 34-303 (f) gives the Commission the authority to "prescribe such rules and regulations to carry into effect the provisions of this section as it may deem necessary." Under the Commission's Renewable Energy Portfolio Standard ("RPS") rules contained in 15 DCMR §§ 2900-2999, the Commission deemed approved revenue-grade generation meters installed after April 1, 2022, for all facilities participating in the RPS that measures the generated electricity at the AC output of an inverter "be capable of recording the cumulative kilowatt-hours that the generator produces which meets the latest American National Standards Institute C-12.20 standard including an accuracy deviation no greater than +/- 0.5%, and that easily displays all collected data and retains lifetime production even in the event of a power outage."<sup>32</sup> Prior to the Commission's final rulemaking, projects that were less than 10 kW in capacity had been permitted to use generation estimates rather than revenue-grade production meters. By the Commission's final rulemaking, all such meters installed before April 1, 2022, were grandfathered in and in effect deemed approved.<sup>33</sup> Inasmuch as the meters are deemed approved under these circumstances, Pepco cannot evade its statutory obligation to use the CREF production

---

<sup>28</sup> *Office of People's Counsel v. Public Service Comm'n*, 477 A.2d 1079, 1083 (D.C. 1984).

<sup>29</sup> *In re Greenspan*, 910 A.2d 324, 336 (D.C. 2006), citing *In re M.M.D.*, 662 A.2d 837, 855 (D.C.1995).

<sup>30</sup> See D.C. Code § 34-1518 (b)(5)(H).

<sup>31</sup> Pepco's Answer at 14; Pepco's Initial Brief at 4.

<sup>32</sup> 15 DCMR § 2999 – Definitions - Revenue-Grade Generation Meters (April 1, 2022).

<sup>33</sup> *RM-29-2021-01, In the Matter of 15 DCMR Chapter 29 – Renewable Energy Portfolio Standard ("RM-29-2021-01")*, Commission Notice of Final Rulemaking, April 1, 2022.

meter and use its own production meters. Pepco shall remove its production meter within 45 days unless, within 10 days, Pepco files with the Commission an objection to removal based on a detailed legal argument that it needs the meter on the customer's property even though, by statute, only the CREF production meter can be used for billing or, alternatively, that it has some other lawful right to keep the meter there. Pepco is directed to file a report with the Commission in this docket 15 days thereafter detailing the dates and locations of each removal and meter number for each meter. Pepco is not permitted to continue to install its production meters on CREFs or to delay ATOs until the CREF has installed a Pepco-owned meter.

14. Although we have determined that Pepco violated the statute, the issue was one of first impression, and Pepco had at least an argument that it was acting within the law. Absent some indication of bad faith or a willful disregard for the law (rather than a dispute over statutory interpretation), we will not impose penalties under these particular circumstances.<sup>34</sup>

15. Finally, in response to the Joint Petitioners' question about whether the cost of Pepco meters installed on CREFs has been assigned to ratepayers, the Commission directs Pepco to file a report within 20 days of the date of this Order that, among other things, describes how Pepco metering costs for CREFs have been assigned, and the amounts (if any) that have been passed on to ratepayers or paid by CREF developers. Interested persons shall have 15 days after the report is filed to comment.

**COUNT 2: PEPKO HAS VIOLATED THE D.C. CODE BY FAILING TO ACCOUNT FOR AND REMIT UNSUBSCRIBED ENERGY PRODUCED BY CREFS.**

16. **Joint Petitioners:** Joint Petitioners contend that the Commission's rules require that if a CREF is not fully subscribed then Pepco, in its role as the Standard Offer Service ("SOS") Administrator, is obligated to purchase the CREF facility's unsubscribed energy and to remit monthly payments to the CREF Subscriber Organization.<sup>35</sup> Joint Petitioners allege that the Subscriber Organizations have not been receiving these payments on a monthly basis, either due to delays in payments or missing payments.<sup>36</sup> Further, Joint Petitioners allege that Subscribers had recently started to receive checks from Pepco at the time of filing, but that these payments did not include an explanation of how the amounts were calculated.<sup>37</sup> Joint Petitioners argue that the lack of transparency prevents CREF Subscriber Organizations from calculating the amount in payments missing or confirming that Pepco is properly calculating the credit based on the PJM Locational

---

<sup>34</sup> See DC Code 34-1508.

<sup>35</sup> Joint Petition at 21.

<sup>36</sup> Joint Petition at 22-23.

<sup>37</sup> Joint Petition at 23.

Marginal Price, as required.<sup>38</sup> Joint Petitioners also disagree with Pepco's assertion that the Company is now accurately calculating unsubscribed energy payments, noting that even if that were the case, Pepco has, at a minimum, violated 15 D.C.M.R. § 907.9 because its unsubscribed energy payments were not timely remitted. By Pepco's own admission, no unsubscribed payments were made for nearly two years.<sup>39</sup> Joint Petitioners also describe how unsubscribed payments cannot have been correctly calculated given Pepco's use of its proprietary meters to record CREF generation.<sup>40</sup>

17. **Pepco:** Pepco does not dispute that it has not been remitting unsubscribed payments on a monthly basis at least from February 2020 through December 2021, although Pepco states that the issues have since been resolved.<sup>41</sup> Pepco states that it is under no statutory or regulatory obligation to explain the calculation every time payments are provided, so they haven't violated anything by not providing them.<sup>42</sup> Even so, Pepco goes on to explain why calculating the payment has been a challenge.<sup>43</sup> According to Pepco, when it purchases unsubscribed energy acknowledged at the PJM Locational Margin Price, the price is set in real-time and is a fluctuating and dynamic hourly price.<sup>44</sup> However, Pepco's billing system is not configured for a pricing model based on hourly inputs.<sup>45</sup> Therefore, Pepco must do the calculation with a manual input process, which, in turn, required the Company to engage a third party to develop a macro that has enhanced the capability of the manual spreadsheet process. Eventually, that process was overwhelmed by an increasing number of CREFs, and the Company had to develop multiple macros. Pepco recognizes that Subscriber Organizations need to verify calculations, so the Company is developing statements that identify the month, payment amounts, and payment calculations associated with the payment received.<sup>46</sup> In parallel, Pepco asserts that the Company is planning a process for implementing a billing solution that provides a statement with each payment that identifies the payment as an unsubscribed energy payment and provides dates and calculated unsubscribed energy.<sup>47</sup>

---

<sup>38</sup> Joint Petition at 23.

<sup>39</sup> Joint Petitioners' Initial Brief at 23.

<sup>40</sup> Joint Petitioners' Initial Brief at 24.

<sup>41</sup> Pepco's Answer at 22-25.

<sup>42</sup> Pepco's Answer at 25-26.

<sup>43</sup> Pepco's Answer at 25-26.

<sup>44</sup> Pepco's Answer at 22.

<sup>45</sup> Pepco's Answer at 22.

<sup>46</sup> Pepco's Answer at 25.

<sup>47</sup> Pepco's Answer at 25.



18. **Decision:** Pepco does not dispute that it failed to remit unsubscribed energy payments on a monthly basis at least from February 2020 through December 2021, in violation of 15 D.C.M.R. § 907.9, which requires that unsubscribed energy purchased by the SOS Administrator be paid to the CREF Subscriber Organization on a monthly basis. Because Pepco has explained its compliance problems in sufficient detail to avoid finding that it acted in bad faith or willfully disregarded the law, we will not impose a penalty under these particular circumstances. Part of the problem is the fact that Pepco is under no statutory or regulatory obligation to explain its calculations every time payments are provided. To ensure that this problem is adequately addressed, we direct the Commission Staff to issue a NOI to solicit stakeholder input on whether and to what extent this provision should be amended.

**COUNT 3: PEPCO IS VIOLATING DISTRICT LAW BY FAILING TO TIMELY AND ACCURATELY PROVIDE CREF SUBSCRIBERS WITH CNM CREDITS.**

19. **Joint Petitioners:** Joint Petitioners allege that “Pepco has not been providing accurate and timely CNM Credits to customers.”<sup>48</sup> Joint Petitioners also complain that the Subscriber Organizations have consistently received untimely and inaccurate credit allocation reports that are often amended and reissued. Joint Petitioners state that from a review of the allocation reporting, the monthly credits remitted to CREF subscribers have been missing or incorrect with regularity.<sup>49</sup> Joint Petitioners also allege that CREF subscribers are being frequently re-billed in a manner that causes confusion and concern.<sup>50</sup> Joint Petitioners point out that pursuant to D.C. Code § 34-1518 (b)(5)(I)-(J) “the determination of the monetary value of credits allocated to each subscriber to a particular community renewable energy facility shall be based on each subscriber’s percentage interest of the total production of the community renewable energy facility and each month, the value of the credits allocated to each subscriber shall be calculated by multiplying the quantity of kilowatt hours allocated to each subscriber by the subscriber’s CREF credit rate.” Additionally, Joint Petitioners cite to 15 D.C.M.R. §§ 907.5-907.6 which further dictate that “each billing period, the Electric Company shall calculate the value of the CNM Credit for subscribed energy allocated to each subscriber by multiplying the quantity of kilowatt hours allocated to each Subscriber by the CREF Credit Rate.” The Rules require that Pepco note the CNM Credit and the kWh and price upon which it is based as line items on a Subscriber’s Electric Company bill. Joint Petitioners complain that even when the CNM credits are provided, they are untimely, with an inexplicable delay of two months, and possibly inaccurate when it shows that the CREF credit is unusually low or even zero. According to Joint Petitioners, a CREF credit cannot be zero unless the CREF was damaged or offline for an entire month.<sup>51</sup>

---

<sup>48</sup> Joint Petition at 25.

<sup>49</sup> Joint Petition at 26.

<sup>50</sup> Joint Petition at 27.

<sup>51</sup> Joint Petition at 25.

20. Joint Petitioners point out that the dates of recorded generation do not match the dates of the bills sent to subscribers, and that this has an impact on how CNM credits are calculated, which vary monthly.<sup>52</sup> Joint Petitioners reference Pepco's statement that the application of charges will "never be during the month in which the generation is recorded..."<sup>53</sup> Joint Petitioners find that Pepco's interpretation of the term "applicable billing period" in D.C. Code § 34-1501 (9)(A) attempts to untether generation from consumption by delaying the calculation of bill credits from CREF generation.<sup>54</sup> Joint Petitioners further state that a provision of the CREA appears intended to give Pepco a streamlined option to facilitate billing in the correct month by allowing Pepco to require subscribers to have their meter read on the same billing cycle as a CREF. However, Joint Petitioners allege that whether Pepco chooses to update a subscriber's billing month or not, its billing system should be capable of aggregating generation data to match a customer's aggregated consumption data for a billing period.<sup>55</sup> Joint Petitioners cite CREA's legislative history, stating that the Council of the District of Columbia did not intend for net-metered solar systems and CREFs to be treated differently in regard to the timing of their generation crediting, citing the Committee Report on Bill 20-0057.<sup>56</sup>

21. Joint Petitioners allege that some of the issues with Pepco's billing practices are related to Pepco manually calculating CREF bill credits.<sup>57</sup> Joint Petitioners note that Pepco blames the complexity of DOEE's Solar for All program for its inability to keep up with CREF billing to subscribers, due to Pepco's aggregation scheme for Solar for All CREFs that resulted in a period of eight (8) months where subscribers could not be accurately billed.<sup>58</sup> Joint Petitioners allege that Pepco required DOEE to submit its CREFs as aggregations.<sup>59</sup> Joint Petitioners also aver that it is illogical that Pepco's allocation reports could contain different data than has been billed to customers since the same inputs are used to calculate both.<sup>60</sup> Joint Petitioners also state that a key

---

<sup>52</sup> Joint Petitioners' Initial Brief at 27-29.

<sup>53</sup> Joint Petitioners' Initial Brief at 27.

<sup>54</sup> Joint Petitioners' Reply Brief at 12-13.

<sup>55</sup> Joint Petitioners' Initial Brief at 27-28.

<sup>56</sup> See Joint Petitioners' Initial Brief at 28, citing Committee on Government Operations Report on Bill 20-0057, the "Community Renewable Energy Act of 2013": "A subscriber would continue to be billed for their consumption of electricity by the electric company. However, at the end of each billing cycle, the electric supplier will reconcile the credits you earned from your subscription with the usage on the subscriber's account for that cycle. If the subscriber's bill is higher than the credits earned, then the difference will be owed by the subscriber. If the credit that a subscriber is eligible to receive in any given month, exceeds the amount of the subscriber owes for that billing period, then excess credits will roll over from month to month until they are used."

<sup>57</sup> Joint Petition at 37.

<sup>58</sup> Joint Petitioners' Initial Brief at 27-28.

<sup>59</sup> See Joint Petition, Exhibit A, Footnote 12.

<sup>60</sup> Joint Petitioners' Initial Brief at 29-30.

input to both allocation reports and credits to subscriber bills is the recording of generation for which Pepco has been using its proprietary meters.<sup>61</sup>

22. **Pepco:** Pepco asserts that the Joint Petitioners' Complaint regarding delay and inaccuracy is based almost entirely on the credit allocation report, which, according to Pepco, the Company provides as a courtesy rather than pursuant to a statutory or regulatory requirement. Inasmuch as the report is a courtesy, Pepco argues that it has not violated anything even if the report comes later than expected or contains an inaccuracy that is later revised. Pepco concedes that there have been problems, and that Pepco experienced difficulties billing subscribers in 2020, including a remediation of customers completed in April 2021.<sup>62</sup> Pepco also states that a major billing system upgrade in 2021 required Pepco to issue a revised bill to subscribers or place a one-time credit on subscribers' bills to the extent that billing system changes impacted their allocations.<sup>63</sup> In some instances, damage to a meter on the customer side of the meter has occurred and prevented the meter from recording generation. When that kind of problem comes to Pepco's attention, the Company works with the customer to resolve the issue. Other times, it is a problem that requires updates to the Company's billing processes.<sup>64</sup> According to Pepco, the billing process issue has been further complicated by DOEE's decision to aggregate the Solar for All CREFs because a delay in reading one meter in the aggregated group will delay credits applied to the entire group. Pepco alleges that all the billing issues have been rectified.<sup>65</sup> Pepco also alleges that Joint Petitioners misinterpret D.C. Code § 34-1501 (9)(A), because the language "during a subscriber's applicable billing period," indicates that the credit "must go through a billing process before appearing on the bill" resulting in "placing the subscriber's bill in the following month."<sup>66</sup>

23. **Decision:** This Count raises two separate, but related issues: (A) an alleged failure by Pepco to remit CNM credits on a monthly basis in violation of D.C. Code §34-1518 (b)(5)(I)-(J); and (B) an alleged violation of D.C. Code § 34-1501 (9)(A) by Pepco by remitting CNM credits in a manner that decouples a subscriber's generation from consumption. Under Issue A, Pepco does not dispute that it has at times failed to provide CNM credits to subscribers on monthly basis, in violation of D.C. Code §34-1518 (b)(5)(I)-(J), and has required multiple re-calculations or remediations to furnish one-time credits to customers after periods in which the crediting system was not functioning. However, Pepco has explained its compliance problems in sufficient detail to avoid a finding that it acted in bad faith or willfully disregarded the law, so we will not impose a penalty under these particular circumstances. While Pepco is under no statutory obligation to

---

<sup>61</sup> Joint Petitioners' Initial Brief at 31.

<sup>62</sup> Pepco's Answer at 9-10.

<sup>63</sup> Pepco's Answer at 12.

<sup>64</sup> Pepco's Answer at 31-32.

<sup>65</sup> Pepco's Answer at 33.

<sup>66</sup> Pepco's Initial Brief at 16-17.

provide allocation reports, we direct the Commission Staff to solicit stakeholder input through the NOI on whether and to what extent the regulations need to be amended to address allocation reporting.

24. Regarding Issue B, the statute on which Joint Petitioners rely is in the definition section for Chapter 15 of Title 34 and defines “community net metering” as “a billing arrangement under which the monetary value of electric energy generated by a community renewable facility and delivered to the electric company’s local distribution facilities is used to offset electric energy charges accrued during a subscriber’s *applicable billing period*” (emphasis added). This language does not place any affirmative obligation on Pepco to apply a credit in a particular fashion but rather leaves it to Pepco’s discretion in accordance with its billing practices or to the Commission as clarified in a rulemaking. Pepco explained how it applies the credit and although its practice does not violate the statute, we direct the Commission Staff to solicit stakeholder comment through the NOI on whether and how the term “applicable billing cycle” should be defined.

25. Pepco has stated that its billing issues have been resolved. The Commission directs Pepco to include a detailed description of billing improvements the Company has made in the 20-day report first mentioned in paragraph 15 of this Order.

**COUNT 4: PEPCO MAY BE VIOLATING DISTRICT LAW BY FAILING TO CONSISTENTLY ACCOUNT FOR CARRY OVER CREDITS.**

26. **Joint Petitioners:** Joint Petitioners point out that D.C. Code § 34-1518(b)(5)(K) requires that any credits generated by CREFs and allocated to subscribers that exceed the amount owed by the subscriber shall carry over from month to month until the value of any remaining credits is used.<sup>67</sup> Joint Petitioners allege that the credit allocation reports provided by Pepco to CREF Subscriber Organizations do not show whether bill credit amounts contain carry-over credits.<sup>68</sup> Additionally, Joint Petitioners allege that Pepco’s practice is not to separate out the carryover as a line item on their bill.<sup>69</sup> Joint Petitioners argue that there is no easy way for the CREF Subscriber Organization to reasonably verify that carryover credits are being accurately accounted for and greater transparency is necessary to provide customers with accurate information regarding the current value of their credits.<sup>70</sup>

27. **Pepco:** Pepco states that it is carrying over excess credits from month to month until all credits are fully used as the law requires but the credit is located on customer bills in the “Total Credit Amount” line included in the balance of all other credits as opposed to appearing as

---

<sup>67</sup> Joint Petition at 30.

<sup>68</sup> Joint Petition at 30.

<sup>69</sup> Joint Petitioner’s Initial Brief at 32.

<sup>70</sup> Joint Petition at 30.

an individual line item.<sup>71</sup> The Company contends that, while this particular practice does not violate any law or Commission rule, the Company is exploring a bill redesign to provide greater transparency, enhance the customer experience and include a summary on the bill to show the carryover credit.<sup>72</sup>

28. **Decision:** As Joint Petitioners concede, they do not know whether Pepco is violating the law because Pepco does not separate the carryover credit as a line item on the bill. While the law does not require Pepco to separate out this credit, Pepco is willing to voluntarily provide greater transparency. We, therefore, direct Pepco to include an explanation of what, if any, progress has been made in redesigning the bill in the 20-day report first mentioned in paragraph 15 of this Order.

**COUNT 5: PEPCO HAS VIOLATED THE COMMISSION'S BILLING REGULATIONS BY FAILING TO TIMELY REPORT BILLING ERRORS RELATED TO CREFS.**

29. **Joint Petitioners:** Joint Petitioners point to 15 D.C.M.R. §§ 304.16 through 304.21 that establish billing error reporting requirements.<sup>73</sup> Joint Petitioners allege that Pepco has failed, or refused, to provide the Commission, OPC, and its customers with timely and complete billing error notifications required by the rules.<sup>74</sup> Joint Petitioners allege that Pepco has filed four (4) billing error notices regarding CREF billing but additional billing errors have occurred that Pepco has failed to report.<sup>75</sup> Joint Petitioners provide a non-exhaustive list of 10 examples of billing errors that occurred but were not reported in violation of the Commission's rules.<sup>76</sup> Joint Petitioners argue that failure to read a CREF meter in time, if it impacts more than 100 customers, is a billing error under Commission regulations because it results in an overcharge to subscribers.<sup>77</sup>

30. **Pepco:** Pepco maintains that it has not violated the Commission reporting standards for billing errors.<sup>78</sup> With respect to three (3) alleged billing errors - the first, third, and sixth – are not reporting errors because the Company reported them to the Commission.<sup>79</sup> Pepco argues that

---

<sup>71</sup> Pepco's Answer at 34.

<sup>72</sup> Pepco's Answer at 35.

<sup>73</sup> Joint Petition at 31-32.

<sup>74</sup> Joint Petition at 32.

<sup>75</sup> Joint Petition at 32-33.

<sup>76</sup> Joint Petition at 33.

<sup>77</sup> Joint Petitioners' Initial Brief at 35-37.

<sup>78</sup> Pepco's Answer at 38.

<sup>79</sup> Pepco's Answer at 38-39.

four alleged errors do not qualify as reportable billing errors under Commission regulations.<sup>80</sup> The second and ninth alleged billing errors resulted from meter reading timing issues caused by problems in CREF generation allocation rather than the types of errors listed in the Commission Rules.<sup>81</sup> The seventh alleged billing error, according to Pepco, was the result of a DOEE request on how to apply credits from a virtual CREF (“VCREF”) that led to a series of discussions and the creation of Solar for All group 19 (an exclusively VCREF group).<sup>82</sup> Pepco argues that this billing error is not required to be reported under the Commission’s rules.<sup>83</sup> While Pepco believes that the fifth alleged billing error is vague and fails to provide sufficient information, the Company believes it is an issue with Solar for All Group 06 that resulted from the generator not functioning properly and not a result of the Company’s equipment or actions.<sup>84</sup> As such, Pepco asserts the undercounting of the generation was not an error by Pepco, and the Commission’s rules do not require the Company to report the undercounting of the generation.<sup>85</sup> According to Pepco, the remaining billing error is lacking in sufficient detail for Pepco or anybody else to tell whether it is a reportable error; consequently, this part of the complaint should be dismissed.

31. **Decision:** Our rules require the Company to report billing errors where there is no dispute.<sup>86</sup> However, our rules were not intended to turn billing disputes (particularly over statutory interpretation) into reportable billing errors. But CREFs may present a unique billing error circumstance warranting a revision to the rules since CREFs, which are not customers, do not have the standing to bring consumer complaints under Chapter 3 of our rules. The Commission Staff is directed to explore this issue with interested stakeholders in the NOI.

#### **COUNT 6: PEPCO HAS VIOLATED DISTRICT LAW BY BILLING CREF SYSTEMS FOR NET ENERGY METERING.**

32. **Joint Petitioners:** Joint Petitioners state that, contrary to 15 D.C.M.R. § 304.22, which prohibits CREF generation from being eligible for net energy billing, and even though CREFs are generators, not customers, Pepco has been sending bills to CREFs that resemble net metering bills.<sup>87</sup> Joint Petitioners also highlight the Commission’s decision that Pepco could not

---

<sup>80</sup> Pepco’s Answer at 39.

<sup>81</sup> Pepco’s Answer at 40-41.

<sup>82</sup> Pepco’s Answer at 41-42.

<sup>83</sup> Pepco’s Answer at 42.

<sup>84</sup> Pepco’s Answer at 42-43.

<sup>85</sup> Pepco’s Answer at 42-43.

<sup>86</sup> *See generally* 15 DCMR § 304 (June 5, 2020).

<sup>87</sup> Joint Petition at 35.

assess CREF owners a customer charge.<sup>88</sup> To establish that Pepco is billing CREFs for net energy metering, Joint Petitioners provide exhibits of a bill with a positive balance and a past due notice sent to CREFs,<sup>89</sup> and point to Pepco's own Billing Error Notification Report filed on February 22, 2022, which shows that Pepco is sending bills to Subscriber Organizations.<sup>90</sup> Joint Petitioners point out that CREFs are not an approved tariff class, and therefore Pepco should not be sending bills to CREFs. Joint Petitioners state that if any CREF owners or subscriber organizations have paid these bills, they should be refunded.<sup>91</sup>

33. According to Joint Petitioners, Pepco's purported failure to zero out certain charges on its bills to CREFs violates 15 D.C.M.R. § 907.4 because it amounts to net energy billing. Pepco's acknowledged practice of billing and then "zeroing out" Subscriber Organizations for energy use is a *per se* violation of 15 D.C.M.R. § 907.4 because billing for both consumption and generation is the hallmark of net energy metering.<sup>92</sup>

34. **Pepco:** Pepco denies that it is violating 15 D.C.M.R. § 907.4, contending that it is reasonable and lawful to send bills to CREFs for a distribution charge when the CREF is using energy off the grid, even if the usage is minimal. According to Pepco, the distribution charge is entirely offset by the "Subscriber Org Offset Credit," which, when it appears on the bill, resembles the positive balance format for net metering even though, according to Pepco, energy usage has not been netted against the generation. In Pepco's view, the practice may be a little confusing, but it comports with, rather than violates, the Commission's regulations. Even if minimal, the CREF's electricity usage triggers the imposition of District imposed charges that Pepco believes it is legally required to impose. The District-imposed charges are the "Energy Assistance Trust Fund," "Sustainable Energy Trust Fund," "Public Space Occupancy Surcharge," and "Delivery Tax."<sup>93</sup> Pepco states that it has tried to stay within the law but suggests that additional clarity from the Commission defining how Pepco should be treating the District-set charges and the Supply Charges for Supplier Organizations would benefit the process.<sup>94</sup>

35. **Decision:** 15 D.C.M.R. § 907.4 states:

The amount of electricity generated by a CREF each month and available for purchase as subscribed or unsubscribed energy shall be

---

<sup>88</sup> Joint Petitioner's Initial Brief at 38.

<sup>89</sup> Joint Petition at Exhibits A-5 and A-6.

<sup>90</sup> Joint Petition at 35.

<sup>91</sup> Joint Petitioner's Initial Brief at 37-39.

<sup>92</sup> Joint Petitioner's Reply Brief at 20.

<sup>93</sup> Pepco's Answer at 46.

<sup>94</sup> Pepco's Answer at 46.

determined by a revenue quality interval meter (production meter) installed and paid for by the Subscriber Organization. The interval meter shall be capable of recording energy production based on intervals of at least five minutes. After installation of the interval meter, it shall be the Electric Company's responsibility to determine that the revenue quality interval meter has been properly installed in accordance with industry standards. It shall also be the responsibility of the Electric Company to read the revenue quality interval meter. In no event shall the electricity generated by a CREF be eligible for net energy billing.

Joint Petitioners have provided Exhibits A-3 and A-5 containing bills sent to DOEE for CREFs. Pepco's manner of calculation appears to be inconsistent between the two. Pepco has specifically denied that it has engaged in net energy billing and explained its process in detail, stating that it is not netting consumption against generation. While we agree that the bills are certainly confusing, they do not prove that Pepco is in violation of 15 D.C.M.R. § 907.4 by engaging in net energy billing, especially given Pepco's express denial. However, Pepco's representation that it is not engaged in net energy billing, coupled with the fact that the law requires that a CREF owner's revenue quality production meter be used to allocate the amount of electricity generated each month, reinforces our view that Pepco should remove its production meters from the private property.

**COUNT 7: PEPKO'S ACTIONS CONSTITUTE NEGLECT, WASTE RATEPAYER RESOURCES, AND FRUSTRATE THE ABILITY OF THE DISTRICT TO ACHIEVE ITS CARBON REDUCTION GOALS.**

36. **Joint Petitioners:** Joint Petitioners assert that Pepco's practices and policies, with respect to the implementation of CREF-related statutes and regulations, frustrate the District's ability to achieve clean energy and equity goals set forth in legislation.<sup>95</sup> Additionally, Joint Petitioners argue that Pepco's failure to timely and accurately apply CREF payments raises questions of how many CNM Credits are unaccounted for and undermines the public confidence in CREFs causing financial harm to CREF Subscriber Organizations.<sup>96</sup> Joint Petitioners also allege that Pepco frustrates the process of enrolling CREF subscribers by requiring a 22-digit service number in addition to name, address, account number, and CREF ownership share, which is not permitted under D.C. Code § 34-1518.01 (g). Joint Petitioners allege that this additional requirement often leads to failed enrollments and delays in customer participation in the CREF market.<sup>97</sup>

---

<sup>95</sup> Joint Petition at 36.

<sup>96</sup> Joint Petition at 39-40.

<sup>97</sup> Joint Petitioner's Initial Brief at 43.



37. **Pepco:** Pepco asserts that its process comports with the law, is reasonable, and does not frustrate the District's climate and energy goals.<sup>98</sup> Furthermore, the Company states that it is focused on a path forward of supporting DOEE and other Subscriber Organizations and of continuous improvement of the processes for managing the provision of services to CREFs in the District of Columbia.<sup>99</sup> Pepco alleges that it needs the 22-digit service number for subscribers to ensure that credits are not misapplied.

38. **Decision:** Although the statute does not specifically state that Pepco can impose the 22-digit service number, it also does not prohibit it. Nevertheless, the Commission Staff is directed to invite stakeholder comment through the NOI on whether there are alternatives that will facilitate CREFs without undermining Pepco's legitimate interest in ensuring that credits are misapplied.

39. Regarding the Joint Petitioners' allegations that Pepco's practices frustrate the achievement of the District's climate mandates, the billing dispute has been resolved, and to the extent that unresolved legal issues frustrated compliance with the District's climate goals, that is no longer the case.

## RECONCILIATION AND AUDIT

40. We direct Pepco to conduct a reconciliation of all CREF crediting from May 8, 2015, the date of the promulgation of our CREF regulations. We direct the Commission Staff to appoint an independent auditor, paid by Pepco, to oversee the reconciliation performed by Pepco, within 120 days of this Order. This supersedes the Commission's directive in Order No. 21174 for Staff to prepare a Scope of Work for the auditor.<sup>100</sup> We direct that the reconciliation process be conducted as follows:

1. Pepco shall prepare a spreadsheet or dataset containing the following information for **each CREF**, to be filed within this docket within **90 days from the appointment of the Commission auditor**:
  - a. CREF name and address.
  - b. Subscriber organization name.
  - c. CREF Capacity (DC and AC).
  - d. Date of ATO
  - e. Number of subscribers in each month from ATO to date
  - f. Total generation from ATO to date recorded by Pepco production meter, in kWh

---

<sup>98</sup> Pepco's Answer at 47.

<sup>99</sup> Pepco's Answer at 51.

<sup>100</sup> Order No. 21174, ¶19.

- i. Monthly generation recorded by Pepco production meter for each month from ATO to date, in kWh<sup>101</sup>
- g. Total generation from ATO to date recorded by CREF production meter, in kWh
  - i. Monthly generation recorded by CREF production meter for each month from ATO to date, in kWh
- h. The total discrepancy between Pepco production meter and CREF production meter from ATO to date, if any, in kWh
  - i. The monthly discrepancy between Pepco production meter and CREF production meter from ATO to date, if any, in kWh
- i. Total production credited to subscribers, from ATO to date, in kWh and dollars
  - i. Monthly production credited to subscribers, from ATO to date, in kWh and dollars
- j. Total remediated production to subscribers based on CREF production meter, from ATO to date, in kWh and in dollars
  - i. Monthly remediated production to subscribers based on CREF production meter, from ATO to date, in kWh and in dollars
- k. The total discrepancy between credited production and remediated production to be credited to subscribers, from ATO to date, in kWh and dollars
  - i. The monthly discrepancy between credited production and remediated production to be credited to subscribers, from ATO to date, in kWh and dollars
- l. Total production credited as unsubscribed energy, from ATO to date, in kWh and in dollars
  - i. Monthly production credited as unsubscribed energy, from ATO to-date, in kWh and in dollars
- m. Total remediated production to be credited as unsubscribed energy based on the CREF production meter, from ATO to-date, in kWh and in dollars
  - i. Monthly remediated production to be credited as unsubscribed energy based on the CREF production meter, from ATO-date, in kWh and dollars
- n. Total discrepancy between credited and remediated production to be credited as unsubscribed energy, from ATO to-date, in kWh and dollars
  - i. Monthly discrepancy between credited and remediated production to be credited as unsubscribed energy, from ATO to-date, in kWh and dollars
- 2. Pepco shall also prepare a summary spreadsheet or dataset summarizing (a), (h), (k), and (n), above for each CREF excluding monthly data. The summary

---

<sup>101</sup> For all monthly calculations, the Commission defers to Pepco regarding whether using calendar or billing months would be most efficient. Monthly calculations will be necessary because subscriber rolls are updated on a monthly basis.

sheet shall be filed with the Commission within **90 days of appointment of the Commission auditor.**

3. The Commission is willing to work with Pepco to streamline the data retrieval process by exploring options for pulling generation data from PJM-GATS, SRECTrade, the Commission's RPS reporting, or another dataset, rather than having to reach out to each CREF individually.
4. Upon Commission review and approval of the datasets in 1) and 2), the Commission will direct Pepco to proceed with rebilling and notice to CREF subscribers as necessary.

**THEREFORE, IT IS ORDERED THAT:**

41. The Commission **DIRECTS** Potomac Electric Power Company to use only the production meters installed by the CREF owners or developers to determine a CREF's electricity generation;

42. The Commission **DIRECTS** Potomac Electric Power Company to remove, absent any contractual right or some other legal basis to maintain its production meters on private property, its production meters within 45 days of the date of this Order, and to file a report 15 days thereafter;

43. The Commission **DIRECTS** Commission Staff to issue a Notice of Inquiry as set forth in paragraphs 18, 23, 24, 31, and 38 herein, within 15 days of the date of this Order;

44. The Commission **DIRECTS** Potomac Electric Power Company to file a report within 20 days of the date of this Order detailing: an explanation of metering costs, a detailed description of billing improvements, and progress on the Company's CREF subscriber bill re-design, with a 15-day stakeholder comment period thereafter;

45. The Commission **DIRECTS** Commission Staff to appoint an auditor paid by the Potomac Electric Power Company to oversee the reconciliation process set forth in paragraph 40 within 120 days of the date of this order; and

46. The Commission **DIRECTS** Potomac Electric Power Company to conduct a reconciliation of CREF credits as set forth in paragraph 40 herein, within 90 days of the appointment of the Commission's auditor.

**A TRUE COPY:**

**BY DIRECTION OF THE COMMISSION:**

A handwritten signature in black ink, reading "Brinda Westbrook-Sedgwick". The signature is written in a cursive, flowing style.

**CHIEF CLERK:**

**BRINDA WESTBROOK-SEDGWICK  
COMMISSION SECRETARY**