



**Bill No:** **HB 228—Public Service Commission – Rate Suspension Proceedings**

**Committee:** **Economic Matters**

**Date:** **January 27, 2022**

**Position:** **Support**

The Apartment and Office Building Association of Metropolitan Washington (“AOBA”) submits this testimony in **support of HB 228**. AOBA’s members own or manage approximately 60 million square feet of commercial office space and over 296,000 apartment units in the State of Maryland and receive service from the Potomac Electric Power Company (“Pepco”) and the Washington Gas Light Company (“WGL”).

**HB 228** would amend the current law, Public Utilities Article (“PUA”) §4-204, to allow the Public Service Commission the ability to extend a proceeding if it is for an alternative form of ratemaking for an electric company, a gas company, an electric and gas company, or a telephone company for up to an additional 90 days.

For more than forty-five years, AOBA has actively participated as a party in proceedings before the Public Service Commission (“Commission” or “PSC”) involving electric and natural gas energy distribution services representing commercial and multi-family apartment customers of Pepco and Washington Gas. My testimony today in support of **HB 228** is based on AOBA’s long standing participation in rate cases and our recent intervention in Pepco proceedings in Maryland and the District of Columbia considering an alternative form of regulation, a Multi-Year Rate Plan (“MYP”), Case No. 9655 in Maryland and Formal Case No. 1156 in the District of Columbia.

The passage of **HB 228** would extend by an additional 90 days the time the Public Service Commission can investigate and decide applications made by electric, natural gas and telephone utility companies, for approval of alternative forms of ratemaking to recover their costs for providing regulated services to their customers.

The importance of this amendment to Public Utilities Article (“PUA”) §4-204 is best viewed in the context of the Public Service Commission’s duties and responsibilities to regulate public utility companies, and establish utility rates that are just and reasonable and in the public interest. The Public Service Commission has the authority to regulate the activities of all public utility service companies operating in Maryland, including the authority to establish and set the distribution rates that utility companies are permitted to charge their customers.

The Commission must balance the interests of utility customers and utility shareholders in setting rates for utility services. As required by PUA §4-201, rates are required to be “just and reasonable.” In accordance with PUA §4-101, the statute defines a “just and reasonable” rate as one that “fully considers and is consistent with the public good,” and “will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company’s property used and useful in providing service to the public.” These are core principles of Commission rate regulation that underscore the exercise of its regulatory authority regardless of the form of rate regulation.

In considering applications for approval of alternative forms of rate regulation, PUA §7-505(c)(2) provides that the Public Service Commission “may adopt an alternative form of regulation ... if the Commission finds, after notice and hearing, that the alternative form of regulation: (i) protects consumers; (ii) ensures quality, availability, and reliability of regulated services; and (iii) is in the interest of the public, including shareholders of the electric company.”

The proposed HB 228 amendment to PUA §4-204 would provide the Public Service Commission with additional flexibility in investigating the complex proposals submitted by utility companies for approval of alternative forms of regulation.

Historically, Pepco’s distribution rates are determined on an annual basis after the filing of a rate increase application. The Commission considers the company’s application for a rate increase pursuant to an examination of a prior “test year” consisting of the Company’s costs, expenses and required rate of return on the company’s rate base. Based on this investigation of the utility’s costs for a single year period, i.e., “the test year,” the PSC determines on a going forward basis whether an increase in the utilities rates is warranted. If so, the Commission sets the company’s new rates for the “rate effective period.” Those rates remain in effect until such time as the company files a request for another rate increase.

Pepco’s recent application for a Multi-Year Rate Plan (“MYP”) in Maryland covered a three-year period where Pepco requested to set rates that would automatically adjust during the approved three-year MYP.

Specifically, Pepco requested an increase in its rates beginning April 1, 2021 through March 31, 2024. The costs for a MYP are to reflect costs since Pepco's last base rate case but forecasted into the future, i.e., through March 31, 2024. In other words, the Commission must determine rates for three years into the future based on one year of historic costs and projections of future costs three years into the future. It is important that implementation of alternative forms of regulations be implemented correctly and afford all parties appropriate due process protections.

HB 228 will facilitate the best of outcomes from the Commission in complex investigations involving multi-year rate plans based on forecasts. Most importantly, the Public Service Commission will have the necessary time required to balance the competing interests of ratepayers, utility companies and their shareholders, in order to ensure that complex alternative forms of rate regulation serve the public interest, and that rates for distribution energy services are just and reasonable.

The importance of the availability of additional time for the Public Service Commission to investigate utility company applications for approval of alternative forms of rate regulation can best be viewed in the specific context of the Commission's recent consideration of Pepco's Application for approval of the Company's multi-year rate plan ("MYP").

In the Commission's June 28, 2021 Order No. 89868, in Case No. 9655, the Commission noted that an extension of time in the procedural schedule was required for the Commission, and parties, to thoroughly investigate Pepco's application for approval of the Company's proposed multi-year rate plan:

"The Commission shares the concerns raised by Staff ... and AOBA ... regarding the accuracy and granularity of the Company's forecasts. Reliable and reasonable forecasts are essential to the development of a MRP and resulting rates.... **If not for the five-week extension in this case**, Staff would not have had enough time to complete its analysis of Pepco's forecasts, and the Commission would have had no alternative but to reject this rate application." *Potomac Electric Power Company's Application for an Electric Multi-Year Rate Plan*, Case No. 9655, Order No. 89868 at 188, ¶442 (June 28, 2021), (Emphasis supplied). <https://www.psc.state.md.us/wp-content/uploads/Order-No.-89868-Case-No.-9655-Pepco-MYP-Order.pdf>.

In the District of Columbia, the Pepco MYP proceeding was filed on May 30, 2019. As in Maryland, the Pepco MYP proceeding in the District of Columbia necessitated Pepco's filing of several "corrections" to its testimony and several "updated versions" of its testimony, all of which required responsive testimony, and an opportunity for additional discovery in order to protect the parties due process rights.

After evidentiary hearings were held in October 2020, and post-hearing briefs and reply briefs were filed December 9, and December 23, 2020 respectively, the DC Commission issued its Order and Opinion No. 20755 on June 8, 2021, more than two years after Pepco's original MYP application was filed.

AOBA believes that the utility applicants and parties to Commission investigations of any application for approval of alternative forms of rate regulation will also benefit from **at least the 90 day extension of time** that **HB 228** would provide for the Public Service Commission to meet its statutory obligations. In providing the Commission the regulatory flexibility to extend by 90 days the procedural schedule required to thoroughly investigate applications for alternative forms of regulation, the Public Service Commission would benefit from the varied perspectives of participating parties who would have the opportunity to perform their investigations in a timely manner and provide invaluable perspectives and findings in testimonies, hearings, and briefs for Commission consideration. It would also give the Commission the necessary flexibility to incorporate unforeseen events into the evidentiary process time frame.

**For these reasons AOBA urges a favorable report on HB 228.**

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