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February 14, 2023

Andrew S. Johnston
Executive Secretary
Maryland Public Service Commission
6 St. Paul Street, 16th Floor
Baltimore, MD 21202

RE: Case No. 9619

Dear Mr. Johnston:

Please find enclosed Potomac Electric Power & Light Company's request that the Maryland Public Service Commission approve an extension of a revised project operational date for the National Harbor/Livingston Road battery energy storage system project located at Pepco's Livingston Road Substation in Prince George's County.

Please contact me if you have any questions regarding this matter.

Respectfully submitted,

/s/ Matthew K. Segers

Matthew K. Segers

cc: All Parties of Record

Project Operational Date

Potomac Electric Power Company (“Pepco”) hereby requests Maryland Public Service Commission (“Commission”) approval of a revised project operational date for the National Harbor/Livingston Road battery energy storage system project located at Pepco’s Livingston Road Substation in Prince George’s County (“Livingston Road Project” or “Project”).

The Energy Storage Pilot Act requires an operational date of February 28, 2022 for Commission approved pilot projects but allows the Commission for “good cause” to grant an extension. The specific statutory language states the following:

(6)(i) Except as provided in subparagraph (ii) of this paragraph, on or before February 28, 2022, all approved projects shall become operational.

(ii) The Commission may, for good cause shown, grant an extension from the deadline established in subparagraph (i) of this paragraph for unanticipated project development delays.

The Livingston Road Project was originally projected to be operational in February 2022, but was granted extensions by the Commission first to September 2022 and then to April 30, 2023.¹ The Livingston Road Project is now projected to be operational by June 30, 2024. For the reasons set forth below Pepco submits that there is good cause to grant an extension through this date.

The timeline for the Livingston Road Project has been challenged, primarily by the performance of the project contractor A.F. Mensah, Inc. (“A.F. Mensah”). Prior to August 2022, the estimated substantial completion date² of the Livingston Road Project by A.F. Mensah was

¹ See Commission Letter Order, Case No. 9619 (Dec. 15, 2021); Commission Letter Order, Case No. 9619 (Aug. 31, 2022).

² Substantial completion includes requirements such as mechanical completion of the Project, completion of all deliverables necessary to operate the Project, and delivering all necessary approvals and permits for the operation of the Project.

March 15, 2023, which would have permitted Pepco to complete testing and commissioning of the Livingston Road Project prior to April 30, 2023. However, A.F. Mensah needed to remedy their failure to maintain a certificate of good standing under the laws of Maryland and had delays in obtaining necessary construction permits, completing an emergency response plan, submitting a proposal for Pepco's requested scope changes to the Livingston Road Project, and submitting regular schedule updates. On August 15, 2022, Pepco sent A.F. Mensah a letter demanding that A.F. Mensah cure the failure to maintain a certificate of good standing in Maryland and that A.F. Mensah recommit to: a) meeting a Substantial Completion deadline of March 15, 2023; b) ensuring that the Project schedule would not be impacted; and c) continuing to perform pursuant to the Agreement. In response to the August 15, 2022 letter, A.F. Mensah corrected the certificate deficiency, but failed to satisfactorily address the other issues Pepco raised.

Subsequently, Pepco continued to experience delays with A.F. Mensah's performance regarding: (a) the submission of electrical designs; (b) obtaining necessary construction and environmental permits; (c) submitting IT documentation and their emergency response plan relating to the Livingston Road Project; and (d) delivering the necessary switchgear and transformers for the Project. On December 14, 2022, Pepco sent to A.F. Mensah a second letter detailing A.F. Mensah's several breaches and demanding assurances that the Livingston Road Project would be substantially complete by March 15, 2023. Pepco did not receive a response from A.F. Mensah to this second notice.

Finally, on January 25, 2023, Pepco sent to A.F. Mensah a Notice of Termination for Cause. A.F. Mensah was provided 10 business days to cure the previously detailed breaches, i.e., until February 8, 2023. On February 8, Pepco did receive a response from A.F. Mensah, but in its response A.F. Mensah failed to offer to cure their deficiencies and in fact acknowledged that it

will not be able to comply with the Project's Substantial Completion date. In addition, A.F. Mensah informed Pepco for the first time that the budget for the Project would require an additional \$2 million above the original estimate for the Project. This response from A.F. Mensah was wholly unsatisfactory to Pepco, and on February 13, 2023 Pepco sent to A.F. Mensah a formal notice terminating the vendor agreement effective on the same date.

Pepco remains committed to the successful completion of the Livingston Road Project, and has taken steps to move the Project forward.³ Specifically, Pepco has retained a local civil engineering and permitting firm, Dewberry, to assist with finalizing the remaining permits needed for the Livingston Road Project. These permits consist of the Grading Permit, Civil Structure Permit, and the Electrical Permit. As Pepco noted in its second extension request for the Livingston Road Project, applications for these permits could not be submitted prior to the Stormwater Management Concept Plan approval, which was not received until October 31, 2022. These permits will be delayed by a minimum of six (6) additional months due to A.F. Mensah not using peer reviewers, which is a recommended practice.

In addition, Pepco has commenced discussions with a prospective vendor to complete the engineering, procurement, and construction of the Livingston Road Project, and anticipates finalizing a selection in March 2023. This will include selecting a vendor that will be responsible for the operation and maintenance of the Livingston Road Project, as well as the Project's participation in the PJM Interconnection, L.L.C. wholesale markets. As of the date of this filing, Pepco does not have sufficient information regarding any potential Project cost increase that may result from the selection of a new vendor, but Pepco commits to updating the Commission with

³ Pepco also commits to continue its engagement with the communities in the Livingston Road Project area as the Project continues to move forward.

this information as soon as it becomes available. Moreover, Pepco is currently reviewing potential contractual remedies regarding A.F. Mensah that could mitigate any Project cost increase relating to the change in vendor.

As Pepco noted in its second extension request, because the Livingston Road Project is being installed at Pepco's Livingston Road Substation, switchgear and transformers that are specifically designed and custom made are needed to accommodate the battery. Pepco learned from the switchgear manufacturer that the order from A.F. Mensah for the switchgear was placed on hold due to technical questions from the manufacturer that remained unanswered by A.F. Mensah. The current estimated delivery date for the switchgear is March 2, 2023. In addition, A.F. Mensah informed Pepco in late 2022 that the transformers that would be needed to complete the Livingston Road Project will not be delivered until July 2023. In its December 14 correspondence to A.F. Mensah, Pepco requested from A.F. Mensah the reason for this delay, but A.F. Mensah failed to respond to Pepco's December 14 letter.

Therefore, Pepco respectfully requests that the Commission approve an extended operational date of June 30, 2024 for the Livingston Road Project for good cause based on the reasons stated above. The revised operational date will not impact the substation deferral benefit related to the Livingston Road Project and the benefit/cost ratio for the Project is still expected to be positive.