

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

ORDER

October 27, 2016

**FORMAL CASE NO. 1116, IN THE MATTER OF APPLICATIONS FOR
APPROVAL OF TRIENNIAL UNDERGROUND INFRASTRUCTURE
IMPROVEMENT PROJECTS PLAN, Order No. 18585**

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia (“Commission”) grants the request of the Potomac Electric Power Company (“Pepco”) and the District Department of Transportation (“DDOT”) (“Application”) to hold in abeyance the second Triennial Underground Infrastructure Improvement Projects Plan (the “Second Triennial Plan”).¹ The Application is held in abeyance until Pepco and DDOT file an amendment pursuant to Section 312 of the Electric Company Infrastructure Improvement Financing Act of 2013 (“ECIIFA” or “Act”).

II. BACKGROUND

2. On November 12, 2014, the Commission issued Order No. 17697, approving the initial Triennial Underground Infrastructure Improvement Projects Plan (the “First Triennial Plan”) filed by Pepco and DDOT (“Joint Applicants,” collectively) and authorized the proposed DDOT Underground Electric Company Infrastructure Activity and Electric Company Infrastructure Activity in accordance with the Order. A complete recitation of the background of this case can be found in Order No. 18171.²

3. Section 307 of the Act requires subsequent Triennial plans to be submitted no later than September 30, 2016, September 30, 2019, and September 30, 2022.³ Section 308 of the Act specifies the contents of the Application. To meet the requirement prescribed by the Act the Joint Applicants filed the Second Triennial Plan requesting that the Application be held in abeyance representing that any feeders chosen in the Second

¹ *Formal Case No. 1116, In the Matter of the Application for Approval of Triennial Underground Infrastructure Improvement Projects Plan (“Formal Case No. 1116”), Joint Application of Potomac Electric Power Company and the District Department of Transportation for Approval of the Second Triennial Plan, filed September 30, 2016 (“Second Triennial Plan”).*

² *Formal Case No. 1116, Order No. 18171 (April 13, 2016).*

³ D.C. Code § 34-1313.07(a).

Triennial Plan are contingent upon securing funding through the District's bond issuance.⁴

4. Because the Joint Applicants are not proposing to select any feeders to be placed underground as part of the Second Triennial Plan, the Application only addresses the requirements applicable to a plan that performs feeder measurement and ranking.⁵ The Joint Applicants submit that the impact of the delayed bond issuance on almost all of the First Triennial Plan feeders and any feeders selected in this Second Triennial Plan and the uncertainty of the timing of resolution of the challenge weigh against selecting feeders for placement underground at this time. The Joint Applicants assert that because they cannot move forward with civil design and construction of selected feeders in the current plan, due to delays in the District bond issuance, selecting no additional feeders at this time and amending the Second Triennial Plan in the future is in the public interest because it provides DDOT and Pepco the ability: (i) to determine feeder ranking based on the then-most-current data, and (ii) to select the appropriate number of feeders given the then-current state of the construction of the First Triennial Plan feeders and other material information. In addition, the Joint Applicants submit holding the Second Triennial Plan in abeyance preserves Commission and party resources for a plan that can be implemented in a timeframe that is reasonably close to approval of the Second Triennial Plan.⁶

5. The Application includes a proposed notice of the application for Commission publication as prescribed by the Act; however, the Joint Applicants note that because no specific authorization is being requested in the present Application, publication of the notice may be premature.⁷ The Joint Applicants request that the Commission find that it is in the public interest to hold this Application in abeyance until such time as the Joint Applicants amend the Second Triennial Plan, in accordance with Section 312 of the Act, with a plan that selects feeders to be placed underground and provides information for the remaining requirements under the Act. Alternatively, should the Commission believe that the Act does not provide it the flexibility to hold this Application in abeyance and instead must deny the Application, the Joint Applicants request that the Commission deny the Application without prejudice and allow DDOT and Pepco to file a new plan when District funding is more certain.⁸

⁴ Second Triennial Plan at 2.

⁵ Second Triennial Plan at 5.

⁶ Second Triennial Plan at 7.

⁷ Second Triennial Plan at 8.

⁸ Second Triennial Plan at 8-9. *See also* D.C. Code § 34-1313.09 which requires the Commission to publish a 60-day notice before deciding upon an application for an order approving a Triennial Plan. The Commission sees no need to issue a public notice since we are not deciding upon a Triennial Plan application.

6. On October 5, 2016, the Apartment and Office Building Association of Metropolitan Washington (“AOBA”) filed comments supporting the Joint Applicants’ request.⁹ AOBA submits that it would be a “misuse of limited resources by the Commission, parties, and ratepayers to proceed at this time with a review of the Joint Applicants’ Second Triennial Plan that is unable to be implemented in accordance with a Commission decision, when issues involving bond financing remain unresolved.”¹⁰ AOBA requests permission to file additional comments on any new or revised filing submitted by the Joint Applicants should the Commission deny the request to hold the matter in abeyance. No other party filed comments on the Joint Applicants’ request.

III. DECISION

7. The Commission has broad authority in managing its docket.¹¹ Generally, the Commission will grant a request of this nature if good cause is shown.¹² We think that the Joint Applicants have demonstrated good cause in this instance and, therefore, grant the request. Moreover, no party will be prejudiced in holding this matter in abeyance. Implementation of the First Triennial Plan has been hampered and delayed due to litigation and other unresolved issues which have prevented the District of Columbia from securing financing for the undergrounding projects.¹³ To date, the District has not secured any financing for the 21 undergrounding projects that the Commission approved by Order No. 17697 back in November 2014. Until the District receives such financing this undergrounding initiative cannot proceed. We agree with the Joint Applicants and AOBA that it would be useless to proceed in reviewing a Second Triennial Plan when the First Triennial Plan has not been implemented due to the unresolved bond financing issue. The District’s bond financing will also be needed to support the Second, Third, and Fourth Triennial Plans. Furthermore, we see nothing in the Act that limits our discretion to hold this abeyance.¹⁴ Unfortunately, until such time

⁹ *Formal Case No. 1116*, Comments of AOBA on the Joint Applicants’ Second Triennial Plan filed October 5, 2016 (“AOBA Comments”).

¹⁰ AOBA Comments at 2.

¹¹ *See Ammerman v. DC Rental Accommodations Comm’n*, 375 A.2d 1060, 1063 (D.C. 1977) (“No principle of administrative law is more firmly established than that of agency control of its own calendar.” “Agencies must be, and are, given discretion in the procedural decisions made in carrying out their statutory mandate.”). *Cf. Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 543-545 (1978) (absent constitutional constraints, administrative agencies “should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties”).

¹² *See, e.g., Formal Case No. 962, In the Matter of the Implementation of the District of Columbia Telecommunications Competition Act of 1996 and Implementation of the Telecommunications Act of 1996*, Order No. 12428, ¶ 13, rel. July 2, 2002.

¹³ *See* Order No. 18171, ¶ 7.

¹⁴ In this instance the Commission is merely ruling on an uncontested procedural request (motion). Even if the Commission were deciding upon an application for an order approving a Triennial Plan, the Act

as the Joint Applicants secure funding through the District’s bond issuance, the joint public-private undergrounding initiative to improve electric service reliability in the District of Columbia remains at a standstill. Accordingly we grant the Joint Applicants’ uncontested request to hold the Second Triennial Plan in abeyance until the Joint Applicants file an amendment pursuant to Section 312 of the Act.

THEREFORE, IT IS ORDERED THAT:

8. The request of Pepco and DDOT to hold in abeyance the Second Triennial Underground Infrastructure Improvement Projects Plan is **GRANTED**; and

9. The Second Triennial Plan application is held in abeyance until Pepco and DDOT file an amendment pursuant to Section 312 of the ECIIFA.

A TRUE COPY:



MISSION:

CHIEF CLERK:

**BRINDA WESTBROOK-SEDGWICK
COMMISSION SECRETARY**

(D.C. Code § 34-1313.09(c)(3)) grants the Commission broad authority to approve an application with or without conditions, or reject an application, in whole or in part, as the Commission considers “necessary and appropriate.”