

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

February 16, 2010

In the Matter of the Application of Potomac *
Electric Power Company for an Increase in *
its Retail Rates for the Distribution Of *
Electric Energy *
*

Case No. 9217

* * * * *

**Petition to Intervene By Maryland
Residential Customer & Public Official Alan Proctor**

Applicant Alan Proctor, acting on his own behalf, hereby petitions for leave to intervene in the above-captioned proceeding. Applicant states the following in support of this petition:

(1) The subject of this proceeding is Pepco’s application for an increase in its retail rates for the distribution of electric energy and rates and terms under which it provides other services, such as residential street lighting as specified Tariff MD-SSL-OH. Pepco submitted its proposed revised Tariff in connection with the revised Street Lighting Service rate design PEPCO (JRB), which it originally filed with the Commission on December 30, 2009 and subsequently revised by subsequent filing on January 15, 2010 to correct errors in its initial filing.

(2) Applicant has a direct and substantial interest in this matter. Applicant: (a) resides in the Town of Somerset, Maryland, and is a citizen of, and is registered to vote in the State of Maryland; (b) is a long-standing resident of an area of Maryland where Pepco is the sole provider of residential electrical distribution service and an area in which Pepco has been the dominant if not exclusive provider of residential street light services for many years; (c) purchases electrical services from Pepco and pays taxes that are used by the Town of Somerset to pay Pepco for the streetlight service it provides to the Town; and (d) is an elected member of the Town Council of the Town of Somerset (Chevy Chase), Maryland, and has in this role been involved in negotiations with Pepco over terms under which the Town could purchase its street lights, or simply replace them with better, more environmentally friendly and cost-effective streetlights once Pepco removes its existing obsolete streetlights which it plans to do in the near future.

(3) Applicant's principal interest in this proceeding is the "Removal Charge" that Pepco has specified on Tariff MD-SSL-OH (on proposed sixth revised page no 16.2) in the revised Street Lighting Service rate design PEPCO (JRB). This provision provides:

"REMOVAL CHARGE"

Street lights furnished by the Company will be removed for a one-time charge in the amount of the sum of the following costs:

- 1. The estimated cost of removing the existing luminaire in service of the same size and type as the luminaire (and/or bracket, if also removed); plus,*

2. *The undepreciated average value (if any) per luminaire in service of the same size and type as the luminaire removed, net of estimated salvage, if the existing luminaire is not reinstalled at a location in the immediate vicinity.”*

(4) The facts are that Pepco has announced plans to remove and dispose of some 36,000 existing obsolete mercury vapor (MV) fixtures in Prince Georges and Montgomery and Counties (which includes those in the Town of Somerset), and to replace them with high pressure sodium (HPS) fixtures. Many experts and others believe that the HPS lights Pepco plans to install are also obsolete and unnecessarily expensive to operate and damaging to the environment as compared with other alternatives, and that the better course would be to take this opportunity to replace mercury vapor with LED technology. Pepco does not currently offer LED streetlight service, however, and even if it did, there are indications that it would be priced at a substantially higher price than competitive alternatives which municipalities should in any event be permitted to consider through a competitive process.

(5) In this context, the Town of Somerset, an independent municipality incorporated under the state laws of Maryland, on whose Town Council petitioner serves, is evaluating through its Environment Committee the costs and benefits of upgrading its streetlights to something other than the HPS fixtures being offered by Pepco, including the option to conduct a competitive procurement in which the Town would consider Pepco's offerings alongside offerings from other providers, which would provide the Town the valuable opportunity to evaluate costs and benefits of various alternatives. This is an ideal time to conduct this review, since Pepco has announced its plan to replace the

obsolete MV fixtures with something else; unfortunately, however, applicant and others understand that Pepco is taking the position, based on the provision cited above, that the Town of Somerset would be required to pay Pepco the “undepreciated” value of the fixtures, which they claim is \$470 per fixture, to have them removed if the Town does not agree to replace them with other fixtures also provided by Pepco. As strange as it seems, Pepco asserts that the Commission itself has actually approved this absurdly high price by virtue of the Tariff that is the subject of this proceeding, even though Pepco admits that the 40+ year old lights are obsolete and is already preparing to remove and dispose of the fixtures, and even though this price is almost the same as brand new, state of the art fixtures using modern new technology.

(6) Further research into Pepco’s methodology for calculating this price reveals that it not only does not take depreciation into account in valuing these obsolete fixtures, but that it also increases prior investments to take account of inflation so that, for example, one dollar of investment made in the past might be valued years later so that it is now treated in current terms as an investment of say \$4.00. On this basis, and using this irrational and in this instance, highly anticompetitive methodology, Pepco claims that should the Town of Somerset desire to pursue alternatives other than continuing street light service from Pepco, it is required to pay this very large charge in addition to Pepco’s costs of simply removing the old streetlights. The natural effect of this practice is to almost double the cost the Town would be required to pay to transition to streetlights provided by an entity other than Pepco, whether on its own with the support of a competitively-selected vendor going forward. Doubling the cost of investing in new and better, more energy efficient and environmentally friendly technology would make a hard

investment decision much harder, most likely effectively killing the option for municipalities to do anything other than remain locked in to continuing indefinitely to purchase streetlight service from Pepco. It would also almost double the payback period, from about 5 to 10 years, for recouping the investment cost through energy savings, which would reduce if not eliminate important natural incentives for municipalities to invest in this better technology. This occurs even though applicant believes that Pepco has long ago recovered its investment in these fixtures and there are far better, less costly, and more environmentally friendly options available from other vendors -- and that state policy prefers selection of vendors based on competition and not state-sanctioned or perpetuated monopoly.

(7) This is an issue of potential state-wide interest, and involves not only what appear to be Pepco's efforts to undermine the right of Maryland municipalities to purchase existing streetlights for "fair market value" as provided in the Maryland State Code, but potential opportunities for municipalities to consider options for owning their own streetlights that could lead to faster and more cost-effective implementation of new, environmentally friendly and lower-cost alternative for street lighting. Applicant raised these questions, among others, in a complaint previously filed with the Commission, on October 19, 2009 (MailLog #119353), and now seeks to join this particular issue in connection with the Tariff that is the subject of this proceeding and which Pepco has previously claimed constitutes Commission approval for its anticompetitive and inappropriate pricing policy.

(8) Based on the foregoing, applicant has a direct and substantial interest in this proceeding.

(9) For the reasons specified below, applicant is also of the opinion that his interests are not likely to be represented adequately by any other party.

(10) The issue of the impact of the questioned provision of Pepco's Tariff has only recently been recognized and come into focus with the emergence of three factors: (a) growing reliance on competitive sourcing of components of the previous effective monopoly held by local power companies, over generation, distribution and related services, such as street lighting, which gives rise to new alternatives for municipal governments; (b) emergence of new lighting technologies that offer radically higher efficiency and lower costs than traditional systems historically offered by Pepco; and (c) Pepco's continuing increases in fixed and overhead rates for streetlight service that applicant believes are substantially in excess of the rate of inflation or growth in Pepco's actual costs. As a result, the opportunities for municipalities to pursue alternatives to those offered by the incumbent local distribution company are relatively new, not necessarily well understood, and the problems with the questioned provision do not necessarily have the prominence yet that they may likely have in the future.

(11) In this context, applicant has been interested in and pursuing these alternatives for the Town of Somerset for several years and has more than two years of relatively unique, first-hand experience with how it appears Pepco manipulates this and other provisions of its tariffs to frustrate and limit municipal governments in considering and acting on alternatives to Pepco's streetlight service.

(12) To the best of applicant's knowledge, although this is an issue of potential importance to some municipalities and others who are concerned about the cost effectiveness, energy efficiency, and environmental friendliness of streetlights, applicant

is not aware of any other entities that currently plan to challenge this provision, or of entities with sufficient economic or institutional interests at stake in the issue, to make challenging Pepco's Tariff provisions in this respect a priority for their limited resources and strained budgets. Municipal governments face many competing priorities for their resources and for those few that may be aware of this issue, applicant believes that they believe it would be unduly expensive and impractical for them to hire counsel to pursue this issue with the Commission. For the same reasons, petitioner understands that it is not likely that the Office of People's Counsel would devote attention and resources to raise this issue on its own. Finally, applicant also understands that other state agencies that might have an interest in the overarching impact on the environment and energy efficiency, and would potentially comment on the issue if it were raised by another party, are not necessarily likely to raise the issue on their own initiative.

(13) Applicant will be representing himself as permitted by Section 3-106 and is well qualified to do so. Among other qualifications, applicant has law, business and economics degrees from Stanford University; studied regulatory economics in undergraduate and graduate schools; practiced administrative and federal antitrust law with the Federal Trade Commission; has participated successfully in other matters before the Maryland Public Service Commission; and has several years of recent experience researching issues and opportunities with respect to residential street lighting, including extensive knowledge of ongoing discussions between one or more Maryland municipalities and Pepco concerning possible replacement and/or acquisition of residential streetlights from Pepco.

(14) Communications regarding this proceeding should be addressed to applicant Alan Proctor at the following addresses:

Postal: 4900 Cumberland Avenue
Chevy Chase, Maryland 20815-5454

Phone: (240) 418-1184

Email: alan@proctors.us

Wherefore, applicant respectfully requests that the Commission grant him leave to intervene as a party and present evidence in the above-captioned case.

Respectfully submitted,

A handwritten signature in black ink that reads "Alan Proctor". The signature is written in a cursive, slightly slanted style.

Alan Proctor (pro se)

4900 Cumberland Avenue
Chevy Chase, MD 20815-5454
(240) 418-1184

Dated: February 16, 2010