

UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

DISTRICT OF COLUMBIA,

Plaintiff,

v.

POTOMAC ELECTRIC POWER
COMPANY

Defendant.

Civil Action No. _____

PARTIAL CONSENT DECREE

I. BACKGROUND

A. The District of Columbia alleges that Potomac Electric Power Company (“Pepco”), along with other individuals and entities, released or threatened to release hazardous substances, pollutants, or contaminants into portions of the Anacostia River.

B. The District of Columbia further alleges that Pepco is a “Covered person” within the meaning of Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9601 *et seq.* (“CERCLA”), and a “Responsible person” within the meaning of Section 8-631.02(1A) of the District of Columbia Brownfield Revitalization Act of 2000, as amended, D.C. Code §§ 8-631.01, *et seq.* (“Brownfield Act”) (hereinafter, Covered persons and Responsible persons are referred to as “Potentially Responsible Persons” or “PRPs”) for costs incurred in investigating and remediating releases or threatened releases into the Anacostia River.

C. In response to releases, or substantial threat of releases, of hazardous substances, pollutants, or contaminants into the Anacostia River including riverbed sediments (“ARSP Site”), the District of Columbia, through the Department of Energy and Environment (“DOEE”), completed and published: (i) the Remedial Investigation Report of the Site on December 31, 2019; (ii) the Feasibility Study Report, including a Focused Feasibility Study Report and a River-Wide Feasibility Study Report, on December 31, 2019; (iii) a Proposed Plan on December 27, 2019; and (iv) an Interim Record of Decision (“Interim ROD”) on September 30, 2020, in accordance with the Brownfield Act, CERCLA, and the National Contingency Plan (“NCP”).

D. Along with this Partial Consent Decree, the District of Columbia, through its chief legal officer, the Attorney General (the “District”), contemporaneously is filing a complaint in this matter against Pepco, under Section 107 of CERCLA, Section 8-632.01 of the Brownfield Act, and Section 8-103.08(b) of the District’s Water Pollution Control Act (“WPCA”), as well as common law claims, seeking damages for and reimbursement of response costs incurred or to be incurred in connection with the ARSP Site including, *inter alia*, (1) costs incurred in developing the Remedial Investigation and Feasibility Study, (2) projected costs to implement the Interim ROD, together with accrued interest, and (3) recovery of damages to the District’s natural resources, in each case as to Pepco, resulting from alleged releases and threatened releases of hazardous substances, pollutants, and contaminants at or from Pepco’s Buzzard Point Facility, located at the intersection of First Street and V Street in Southwest D.C. (“BP Facility”), from Pepco’s network of approximately 60,000 subsurface vaults and manholes primarily located throughout the District of Columbia, as part of its area-wide electrical distribution system (“Vault System”), from Pepco’s Benning Road Facility, located generally at 3400 Benning Road, NE,

Washington, DC 20019 (“Benning Road Facility”), and from other facilities owned and/or operated by Pepco (hereinafter referred to and defined herein as the “Pepco Sites”).

E. Contemporaneous and in connection with the resolution of claims set forth in the District’s complaint and addressed by this Partial Consent Decree for recovery of costs related to alleged releases and threatened releases of hazardous substances from the Pepco Sites, Pepco has agreed to enter into the following additional agreements: (i) a separate consent order to resolve a separate enforcement action filed in the Superior Court for the District of Columbia against Pepco under the WPCA, the Brownfield Act, and the Hazardous Waste Management Act, D.C. Code §§ 8-1301 *et seq.* (“HWMA”), related to operations at Pepco’s BP Facility and of its Vault System, *see District of Columbia v. Potomac Electric Power Company*, D.C. Sup. Ct. Case No. _____ (filed concurrently with this case), pursuant to which Pepco has agreed to pay a civil penalty of \$10 million and conduct certain environmental evaluations and response actions related to the BP Facility and the Vault System and (ii) a First Addendum to an existing consent decree obligating Pepco to perform an RI/FS for the Benning Road Facility pursuant to which Pepco has agreed also to perform or fund remedial actions as the District determines to be necessary for the Benning Road Facility, *see District of Columbia v. Potomac Electric Power Co. & Pepco Energy Services, Inc.*, No. 1:11-cv-00282-BAH (D.D.C.);

F. The District and Pepco (“Party” or “Parties”) acknowledge that additional response actions beyond implementing the Interim ROD at the ARSP Site, including the District’s Future Response Actions, performance monitoring, natural resource damage assessment and restoration activities, and/or future investigation and/or remediation activities in support of the District’s issuance of a final Record of Decision, may be taken to complete the ARSP. Any additional

monitoring, Future Response Actions, natural resource damages, and restoration activities are not covered by or within the scope of this Consent Decree.

G. The Parties agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter without further litigation and without any admission or adjudication of any issue of fact or law is appropriate and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

H. The Parties do not admit any liability as to any claim, counterclaim, or crossclaim asserted against them by the opposing Party.

THEREFORE, with the consent of the Parties to this Consent Decree, it is ORDERED, ADJUDGED, AND DECREED:

I. JURISDICTION AND VENUE

I. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1367 and 1345 and 42 U.S.C. §§ 9607 and 9613(b), and other applicable law. This Court also has personal jurisdiction over the Parties. Venue lies in this District under 28 U.S.C. § 1391(b). Solely for the purposes of this Consent Decree and the underlying Complaint, Pepco waives all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Pepco does not challenge entry or the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

II. PARTIES BOUND

J. This Consent Decree is binding upon the Parties and their heirs, successors, and assigns. Unless the District otherwise consents, any change in ownership or corporate or other legal status of Pepco, including but not limited to any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Pepco under this Consent Decree.

III. DEFINITIONS

K. Unless otherwise defined here, terms used in this Consent Decree are defined consistent with CERCLA and in regulations promulgated under CERCLA.

“ARSP Site” means the approximately 9-mile tidal portion of the Anacostia River that begins at the confluence of the Northwest Branch and Northeast Branch near Bladensburg in Prince George’s County, Maryland, and extends downstream to its confluence with the Potomac River, including Kingman Lake and the Washington Channel, generally shown on the map included in Appendix A.

“Benning Road Facility” means Pepco’s Benning Road Facility, located generally at 3400 Benning Road, NE, Washington, D.C. 20019, which includes the landside portion and waterside portion in the Anacostia River, and is depicted in Appendix B.

“CERCLA” means the Comprehensive Environmental Response, Compensation, and Liability Act, as amended and set forth at 42 U.S.C. §§ 9601-9675.

“Covered Matters” means, for purposes of this Consent Decree, the District’s RI/FS and Interim ROD Activities, including the District’s Past Costs and Interim ROD Costs and interest accrued thereon associated with those Activities. .

“Day” or “day” means a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal or District holiday, the period shall run until the close of business of the next working day.

“District” means the District of Columbia and its Departments, agencies, or instrumentalities.

“District of Columbia Brownfield Revitalization Act,” or “Brownfield Act,” means the Act set forth at D.C. Code §§ 8-631.01, *et seq.*

“District of Columbia Water Pollution Control Act,” or “WPCA,” means the Act set forth at D.C. Code §§ 8-103.01, *et seq.*

“District’s Future Response Activities” means all future response actions at the ARSP Site, including: (i) developing and conducting the monitoring required by the Baseline/Performance Monitoring Plan (see Appendix E); (ii) any additional investigation or remedial work after completion of the Interim ROD that may be required to achieve the River-wide Remedial Action Levels, including but not limited to developing and implementing a Final Record of Decision for the Site.

“District’s Future Response Costs” means all costs, including but not limited to direct and indirect costs and accrued interest, that the District will incur to perform the District’s Future Response Activities. The District’s Future Response Costs do not include Natural Resource Damages.

“District’s Interim ROD Activities” means all response activities that the District has performed or will perform to implement the Interim ROD, including: (i) pre-remedial design work

and preparation of work plans to implement the Interim ROD; and (ii) implementation of the Interim ROD designed to achieve the early action remedial action level of 600 ug/kg.

"District's Interim ROD Costs" means all costs, including but not limited to direct and indirect costs and accrued interest, that the District has incurred or will incur to perform the District's Interim ROD Activities. The District's Interim ROD Costs do not include Natural Resource Damages.

"District's Past Response Costs" means all costs, including but not limited to direct and indirect costs and accrued interest, that the District has paid at or in connection with the ARSP Site for the response actions through September 30, 2020, the date that the District issued the Interim ROD. The "District's Past Response Costs" do not include costs incurred or that will be incurred by the District to: (i) implement separate agreements with the National Park Service concerning the remediation of the land-based portions of Kenilworth and Poplar Point, for which the District may have claims against the United States or other entities; or (ii) monitor or oversee land-based and near-shore work at sites owned or operated by Pepco; Washington Gas Light Company, the United States Department of Navy in its capacity as operator of the Washington Navy Yard, or CSX Transportation, Inc., pursuant to separate agreements with those entities and for which the District may have claims against said entities or any other entity. The District's Past Response Costs do not include Natural Resource Damages.

"DOEE" or the "Department of Energy and the Environment" means the District of Columbia Department of Energy and the Environment and its successor Departments or agencies. The authority to administer and enforce the District of Columbia's environmental laws and otherwise protect human health and the environment is delegated to the Director of DOEE pursuant

to the authority vested in the Director by the District Department of the Environment Establishment Act, D.C. Official Code §§ 8-151.01, *et seq.*, Mayor's Order 2006-61 (53 D.C. Reg. 5684, July 14, 2006), and Mayor's Order 2003-41 (50 D.C. Reg. 2898, April 11, 2003).

“Effective Date” means the date upon which the approval of this Consent Decree is recorded on the Court's docket.

“Interim Record of Decision” or “Interim ROD” means the DOEE Interim Record of Decision signed on September 30, 2020, by the DOEE Director, and all modifications and attachments thereto, pertaining to 11 early action areas. The Interim ROD is attached as Appendix C; a map showing the 11 early action areas is attached as Appendix D.

“NCP” means the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“National Park Service” means the agency within the United States Department of Interior that has been delegated authority to respond to releases and threatened releases pertaining to the ARSP Site, pursuant to CERCLA Sections 104 and 122, 42 U.S.C. §§ 9604 and 9622, and Executive Order 12580, 52 Fed. Reg. 2923 (1987), as amended by Executive Order 13016, 61 Fed. Reg. 45871 (1996).

“Natural Resource Damages” means injuries to natural resources in the tidal Anacostia River, Kingman Lake, and the Washington Channel, as well as within terrestrial and upland areas, that are potentially impacted by releases or discharges of hazardous substances or pollutants.

“Parties” mean the District of Columbia and Potomac Electric Power Company d/b/a Pepco.

“Pepco Sites” means the Buzzard Point Facility, the Vault System, the Benning Road Facility and any other site owned and/or operated by Pepco that is or may be a source of contaminants to the Anacostia River.

“Pollutant” means “pollutant,” as that term is defined in D.C. Code § 8-103.01(19).

“RCRA” means the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901-6992 (also known as the Resource Conservation and Recovery Act).

IV. PAYMENTS FOR THE DISTRICT’S RESPONSE COSTS

L. Payment and Payment Terms. In settlement of its share of liability for the District’s Past Response Costs and the District’s Interim ROD Costs incurred or to be incurred by the District in responding to releases and threatened releases at or from, *inter alia*, the Pepco Sites, as well as interest accruing thereon, Pepco has agreed to pay to the District, for deposit into DOEE’s Clean Land Fund for payment of the District’s Interim ROD Costs, \$47 million according to the following payment schedule: (i) \$11.75 million on the later of: (a) the first anniversary of the Effective Date of this Consent Decree, or (b) January 15, 2025; and (ii) \$11.75 million on each of the successive first, second and third anniversaries of the initial payment date.

M. Payment Instructions. The District shall provide instructions to Pepco for making payment by electronic funds transfer to the District. On the day of each payment, Pepco shall send a notice of payment to the District that shall include a receipt of the payment made in accordance with the District’s instructions. If any of the payments required under this Paragraph is/are late,

Pepco shall pay, in addition to any stipulated penalties owed under Paragraph N, an additional amount for interest accrued from the payment due date until the date of payment.

V. FAILURE TO COMPLY WITH CONSENT DECREE

N. Stipulated Penalties. If any amounts due to the District by Pepco under Paragraph L are not paid or not paid in full by the required date, Pepco shall be in violation of this Consent Decree and Pepco shall pay to the District, as a stipulated penalty, \$1,000 per violation per day that such payment is late.

- a. Stipulated penalties are due and payable within 30 days after the date of the demand for payment of the penalties by the District. Pepco shall make all payments in accordance with the instructions and procedures in Paragraph M. Pepco shall indicate in the comment field that the payment is for stipulated penalties.
- b. Stipulated penalties shall accrue as provided in this Paragraph regardless of whether the District has notified Pepco of the violation or made a demand for payment but need only be paid upon demand. All stipulated penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment.

O. Enforcement Costs. If the District moves to enforce this Consent Decree, Pepco shall reimburse the District for all costs of such motion, including but not limited to attorneys' fees.

P. Waiver. Notwithstanding any other provision of this Section, the District may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Pepco from payment as required by Paragraph L or from performance of any other requirements of this Consent Decree.

**VI. COVENANTS, RESERVATION OF RIGHTS, AND WAIVER OF RIGHTS BY
THE DISTRICT**

Q. Covenants. Except as specifically provided in Paragraph R (Reservation of Rights), the District covenants not to sue or to take administrative action against Pepco, its parent companies or their subsidiaries, or any of their predecessors and successors, officers, directors, or employees, under federal, District, or common law to recover any costs for Covered Matters.

R. Reservation of Rights. The District reserves, and this Consent Decree is without prejudice to, all rights against Pepco, its parent companies or their subsidiaries, or any of their predecessors and successors, officers, directors, or employees, with respect to all matters not expressly included within Paragraph S. Notwithstanding any other provision of this Consent Decree, the District reserves all rights against Pepco with respect to:

- a. Failure of Pepco to meet a requirement of this Consent Decree;
- b. Response costs incurred or to be incurred by the District that are not within the definition of the District's Past Response Costs or the District's Interim ROD costs;
- c. The District's Future Response Costs;

- d. Any violations of applicable Laws other than as explicitly described in and encompassed within the District's Covenant Not to Sue;
- e. Criminal liability; and
- f. Natural Resource Damages including damages for injury to, destruction of, or loss of natural resources, and for the costs of any Natural Resource Damages assessments.

The District further reserves, and this Consent Decree is without prejudice to, all rights against any potentially responsible party, excluding Pepco, with respect to recovery of the remainder of the District's Past Costs, including interest accruing thereon.

S. Waiver of Rights. The District waives all claims against Pepco or any other potentially responsible party to recover the District's Interim ROD Costs or any portion thereof, including interest accruing thereon.

VII. COVENANTS, RESERVATION OF RIGHTS, AND WAIVER OF RIGHTS BY PEPSCO

T. Covenants. Pepco covenants not to sue and agrees not to assert any claims or causes of action against the District, or their contractors or employees, with respect to Covered Matters and this Consent Decree, including but not limited to:

- a. Direct or indirect claim for reimbursement from the District based on D.C. Code § 8-634.02 or any other provision of law; or

- b. Any claim pursuant to Section 107 or 113 of CERCLA, 42 U.S.C. § 9607 or 9613, Section 7002(a) of RCRA, 42 U.S.C. § 6972(a), or District law for the District's Past Response Costs or the District's Interim ROD Costs.

Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d), or D.C. Code § 8-634.02.

U. Reservation of Rights. Pepco reserves, and this Consent Decree is without prejudice to, all rights against any other party, excluding the District, with respect to recovery of or contribution for the amounts paid to the District, or any portion thereof, pursuant to Paragraph L of this Consent Decree for the District's Interim ROD Costs. Pepco further reserves all rights and defenses with respect to claims for which the District has reserved its rights under Paragraph R.

V. Waiver of Rights. Pepco waives all claims against any party including the District with respect to the District's Past Response Costs or any portion thereof.

VIII. WAIVER OF CLAIMS BY BOTH PARTIES

W. Waiver of Claims. The Parties agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Sections 107(a) and 113 of CERCLA) that they may have as follows:

- a. De Micromis Waiver. For all matters relating to the ARSP Site against any person where the person's liability to Parties with respect to the ARSP Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the ARSP Site, or having accepted for transport for disposal or treatment of

hazardous substances at the ARSP Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the ARSP Site was less than 110 gallons of liquid materials or 200 pounds of solid materials;

b. Municipal Solid Waste Waiver. For all matters relating to the ARSP Site against any person where the person's liability to Parties with respect to the ARSP Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of Municipal Solid Waste at the ARSP Site, if the volume of Municipal Solid Waste disposed, treated, or transported by such person to the ARSP Site did not exceed 0.2 percent of the total volume of waste at the ARSP Site; and

X. Exceptions to Waivers. If any person asserts a claim or cause of action relating to the Site against a Party, the waivers under this Paragraph shall not apply with respect to any defense, claim, or cause of action that a Party may have against any person.

IX. EFFECT OF SETTLEMENT/CONTRIBUTION

Y. Except as provided in Paragraph W (Waiver of Claims), nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. Except as provided in Articles VII and VIII, the Parties expressly reserve any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. § 9613), defenses, claims, demands, and causes of action that it may have with respect to any matter, transaction, or occurrence relating in any way to the ARSP Site against any person not a Party hereto. Nothing in this Consent Decree diminishes the right of the District pursuant to D.C. Code § 8-634.09, or Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue

any such persons to obtain response costs that are not the District's Interim ROD Costs or additional response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

Z. The Parties agree, and by entering this Consent Decree this Court finds, that this Consent Decree constitutes a judicially approved settlement pursuant to which Pepco, has, as of the Effective Date, resolved liability to the District within the meaning of D.C. Code § 8-634.09(c) and Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), respectively, and is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, or as may be otherwise provided by law, for Covered Matters in this Consent Decree.

AA. The Parties further agree, and by entering this Consent Decree this Court finds, that the complaint filed by the District in this action is a civil action within the meaning of D.C. Code § 8-634.09(a) and within Section 113(f)(1) of CERCLA, 42 U.S.C. § 9613(f)(1), and that this Consent Decree constitutes a judicially approved settlement pursuant to which the Parties have, as of the Effective Date, resolved liability amongst themselves within the meaning of D.C. Code § 8-634.09(c) and Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B).

BB. Pepco shall, with respect to any suit or claim brought by it for contribution for the amounts paid to the District related to the ARSP, or any portion thereof, pursuant to Paragraph L of this Consent Decree for the District's Interim ROD Costs, notify the District in writing within 30 days prior to the initiation of such suit or claim.

CC. In any subsequent administrative or judicial proceeding initiated by the District for injunctive relief, recovery of response costs, or other relief relating to the ARSP Site outside the scope of Covered Matters, Pepco shall not assert, and may not maintain, any defense or claim

based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the District in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenants by the District set forth in Paragraph Q.

X. ACCESS TO INFORMATION

DD. Records Request. Pepco shall provide to the District, upon request, copies of all records, reports, documents, and other information (including records, reports, documents, and other information in electronic form) (hereinafter referred to as “Record” or “Records”) within their possession or control or that of their contractors or agents relating to activities at the ARSP Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information regarding the ARSP Site.

EE. Privileged and Protected Claims. In response to the District’s request for Records, Pepco may assert that all or part of a Record is privileged or protected as provided under federal or District law. If Pepco asserts a claim of privilege or protection, Pepco shall provide the District with the following information regarding such Record: its title; its date; the name, title, affiliation (e.g., company or firm), and address of the author, of each addressee, and of each recipient; a description of the Record’s contents; and the privilege or protection asserted. If a claim of privilege or protection applies only to a portion of a Record, Pepco shall provide the Record to the District in redacted form to mask the privileged or protected information only. Pepco shall retain all Records that they claim to be privileged or protected until the District has had a reasonable

opportunity to dispute the privilege or protection claim and any such dispute has been resolved in Pepco's favor. Pepco may make no claim of privilege or protection regarding any data pertaining to the ARSP Site, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, radiological, or engineering data, or the portion of any other Record that evidences conditions at or around the ARSP Site.

FF. Business Confidential Claims. Pepco may assert that all or part of a Record submitted to the District is business confidential to the extent permitted by and in accordance with D.C. Code § 8-634.03(b). Pepco shall segregate and clearly identify all Records or parts thereof submitted under this Consent Decree for which Pepco asserts a business confidentiality claim. Records that Pepco claims to be confidential business information will be accorded protection consistent with 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies Records when they are submitted to the District, or if the District has notified Pepco that the Records are not confidential, the public may be given access to such Records without further notice to Pepco.

GG. Reservation of Rights. Notwithstanding any provision of this Consent Decree, the District retains all its information gathering and inspection authorities and rights, including enforcement actions related thereto, under the Brownfield Act, and any other applicable District or federal statutes or regulations.

XI. RETENTION OF RECORDS

HH. Term. Until 10 years after the Effective Date, Pepco shall preserve and retain all non-identical copies of Records now in its possession or control or that come into its possession or control, that relate in any manner to its liability under CERCLA or the Brownfield Act with

respect to the ARSP Site. The record retention requirements in this section shall apply regardless of any corporate retention policy to the contrary.

II. Notification. At the conclusion of the record retention period, Pepco shall notify the District at least 90 days prior to the destruction of any such Records, and, upon request by the District, and except as provided in Paragraph HII (Privileged and Protected Claims), Pepco shall deliver any such Records to the District.

JJ. Certification. Pepco certifies that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any Records (other than identical copies) relating to its potential liability regarding the ARSP Site since notification of potential liability by the District, and that it has fully complied with any and all District requests for information regarding the ARSP Site pursuant to the Brownfield Act.

XII. NOTICES AND SUBMISSIONS

KK. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Party in writing. Except as otherwise provided, notice to a Party by email (if that option is provided below) or by regular mail in accordance with this Section satisfies any notice requirement of the Consent Decree regarding such Party.

As to the District:

WESLEY ROSENFELD
Assistant Attorney General
DAVID S. HOFFMANN
Senior Assistant Attorney General

Office of the Attorney General for the District of Columbia
400 Sixth St., NW
Washington, D.C. 20001
Wesley.rosenfeld1@dc.gov
David.hoffmann@dc.gov

As to Settling Defendant:

ANNE BANCROFT
Vice President & General Counsel
Pepeco Holdings, Inc.
701 Ninth Street, N.W.
Washington, DC 20068
Anne.Bancroft@Exeloncorp.com

DAVID TOMLINSON
Assistant General Counsel
Exelon
1310 Point Street
Baltimore, MD 21231
David.Tomlinson@Exeloncorp.com

XIII. RETENTION OF JURISDICTION

LL. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XIV. INTEGRATION/APPENDICES

MM. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: “Appendix A” (ARSP Site map); “Appendix B” (Benning Road Facility), “Appendix C” (Interim

ROD); “Appendix D” (ARSP early action areas); “Appendix E” (Baseline/Performance Monitoring Plan).

XV. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

NN. Public Comment. This Consent Decree shall be lodged with the Court for a period of at least 60 days to allow the District to publish the Consent Decree for public notice and comment and to review and consider comments. The District and Pepco reserve the right to withdraw or withhold their respective consent if the comments regarding the Consent Decree disclose facts or considerations that indicate that this Consent Decree is inappropriate, improper, or inadequate.

OO. Evidence. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XVI. SIGNATORIES/SERVICE

PP. Each undersigned representative of Pepco and the District certifies that he or she is authorized to enter this Consent Decree and to execute and bind legally such Party to this document.

QQ. Pepco agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the District has notified Pepco in writing that it no longer supports entry of the Consent Decree.

RR. Pepco hereby agrees to accept service by mail at the address provided in Paragraph KK with respect to all matters arising under or relating to this Consent Decree. Pepco hereby agrees

to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to service of a summons. The Parties agree that Pepco need not file an answer to the complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

XVII. FINAL JUDGMENT

SS. Upon entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the District and Pepco with respect to the Covered Matters. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ___ DAY OF _____, 20__.

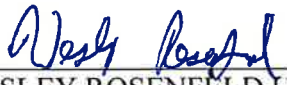
United States District Judge

FOR THE DISTRICT OF COLUMBIA:

BRIAN L. SCHWALB
Attorney General for the District of Columbia


JENNIFER C. JONES
Deputy Attorney General

ARGATONIA D. WEATHERINGTON
Chief, Social Justice Section

/s/ 
WESLEY ROSENFELD [1002428]
Assistant Attorney General

Date: 10/02/2023

/s/

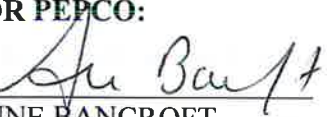

DAVID S. HOFFMANN [983129]
Senior Assistant Attorney General
Public Advocacy Division
400 Sixth Street, NW, 10th Floor
Washington, D.C. 20001

Date: 09/27/2023

Attorneys for the District of Columbia

FOR PEPCO:

/s/


ANNE BANCROFT
Vice President & General Counsel
Pepco Holdings, Inc.
701 Ninth Street, N.W.
Washington, DC 20068

Date: 9/27/23