

PUBLIC SERVICE COMMISSION OF THE DISTRICT OF COLUMBIA
1333 H STREET, N.W., SUITE 200, WEST TOWER
WASHINGTON, D.C. 20005

ORDER

September 13, 2004

FORMAL CASE NO. 945, IN THE MATTER OF THE INVESTIGATION INTO
ELECTRIC SERVICE MARKET COMPETITION AND REGULATORY
PRACTICES, ORDER NO. 13378

I. INTRODUCTION

1. By this Order, the Public Service Commission of the District of Columbia ("Commission") approves the Generation Procurement Credit Rider ("GPC") filed by the Potomac Electric Power Company ("PEPCO" or "Company") on April 28, 2004.¹ This particular phase of the proceeding examines PEPCO's compliance with divestiture sharing distribution obligations that are set forth in the Phase I and Phase II settlement agreements approved by the Commission.² This Order addresses issues relating to the Commission's efforts to restructure the District of Columbia's retail electricity market pursuant to the District of Columbia Retail Electric Competition and Consumer Protection Act of 1999.³

II. BACKGROUND

2. By Order No. 13194, the Commission directed all interested parties to file comments on PEPCO's proposed 2004 GPC Rider within five (5) days from the date of the Order.⁴ Reply comments were due within ten (10) days. By Order No. 13202, the Commission granted OPC's motion to extend the comment period.⁵ Subsequently, an

¹ *Formal Case No. 945, In The Matter Of The Investigation Into Electric Service Market Competition and Regulatory Practices, ("F.C. 945")*, Letter to Sanford M. Speight, Acting Commission Secretary, from Paul H. Harrington, Pepco Associate General Counsel, ("GPC Letter") filed April 28, 2004. By its April 28, 2004 letter, Pepco withdrew an April 21, 2004 filing, citing an error in the earlier GPC proposal.

² *See F.C. 945, Non-Unanimous Agreement of Stipulation and Full Settlement Regarding Divestiture Issues ("Phase I Settlement")*, dated November 8, 1999, as approved through Order No. 11576 at Appendix A, rel. December 30, 1999; *F.C. 945, Order No. 11613, rel. February 17, 2000* (Order establishing Phase II of Formal Case No. 945 to address the issue of PEPCO's post-divestiture unbundled rate structure); and *F.C. 945, Non-Unanimous Agreement of Stipulation and Full Settlement Regarding Unbundled Rate Issues ("Phase II Settlement")*, approved through Order No. 11845, rel. December 5, 2000.

³ D.C. Code, 2001 Ed. §§ 34-1501 - 1520.

⁴ *F.C. 945, Order No. 13194, rel. May 18, 2004.*

⁵ *F.C. No. 945, Order No. 13202, rel. May 26, 2004.*

extension was granted to PEPCO with respect to the submission of its reply comments.⁶ OPC submitted comments on May 27, 2004,⁷ and PEPCO submitted its reply comments on June 7, 2004.⁸ No other party submitted comments on PEPCO's 2004 GPC filing.

3. In Order No. 11576, the Commission approved the Phase I Settlement, which authorized Pepco to sell the bulk of its electric generating assets.⁹ The Commission's decision to approve the Phase I Settlement was based on its evaluation of the benefits to District ratepayers, as well as its determination that these benefits outweighed any potential detriments resulting from the divestiture. As part of the Phase I Settlement, the Commission found that the GPC provision was in the public interest because it benefited both ratepayers and shareholders.

4. Article IV of the Phase I Settlement establishes the general parameters for calculation of the GPC credit.¹⁰ As specified in Article IV of the Phase I Settlement, during the rate cap period, any gains realized by PEPCO from the provision of Standard Offer Service ("SOS") generation are subject to sharing with DC ratepayers. The Phase I Settlement allows for a GPC mechanism whereby Pepco will share profits gained from its divestiture of generation services and procurement of energy in the open market with all ratepayers and shareholders.¹¹ Specifically, if Pepco receives profits of \$20 million or less, ratepayers would receive 80 percent of such profits, and shareholders would receive 20 percent. If Pepco's profits exceed \$20 million, the Phase I Settlement provides that ratepayers would receive 60 percent of such profits, and shareholders will receive 40 percent.¹² Finally, the sharing of any net profits with ratepayers is to be done via a per kilowatt-hour ("kWh") credit.¹³

5. The Phase I Settlement further specified that PEPCO would retain the portion of the net profit, if any, that would otherwise flow to ratepayers up to the amount of the guaranteed rate reductions included in Sections 3.03 and 3.05 of the settlement.¹⁴

⁶ *F.C. 945*, Order No. 13215, rel. June 4, 2004.

⁷ *F.C. 945*, Comments of the Office of the People's Counsel on the Proposed Generation Procurement Credit Rider Filed By Potomac Electric Power Company on April 28, 2004 Pursuant to Order No. 13194, filed May 27, 2004 ("OPC Comments").

⁸ *F.C. 945*, Reply Comments of Potomac Electric Power Company, filed June 7, 2004 ("PEPCO Reply Comments").

⁹ *F.C. 945*, Order No. 11576, rel. December 30, 1999.

¹⁰ *Id.* at § 4.01. Paragraphs 2, 5, and 7 of the Phase II Settlement include further refinements with respect to the GPC calculation, which are addressed later in this Order.

¹¹ *Id.* at § 4.01.

¹² *Id.*

¹³ In effect, any net profit is allocated to the residential and commercial classes on a kWh basis.

¹⁴ See Article 3.03 and 3.05 of the Phase I Settlement.

Residential customers received a base rate reduction of 2.77 mills per kWh on February 8, 2001.¹⁵ Commercial customers received a base rate reduction of 1.09 mills per kWh at that same time. Accordingly, the proposed GPC bill credit reflects the shared savings amounts in excess of the above levels.¹⁶

6. As previously noted, the Phase II Settlement also addresses the GPC calculation. In Paragraph 2, the GPC calculation is amended to include the net benefits, if any, associated with PEPCO's EUM (i.e., curtailable load) programs. Accordingly, PEPCO has taken the value of the PJM capacity benefits received from the EUM programs of \$0.268 million and subtracted bill credits, equipment costs and miscellaneous expenses of \$1.511 million to arrive at a net EUM benefit of negative \$1.243 million. This amount is subtracted from the total GPC margin to be shared between the Company and ratepayers.¹⁷

7. By way of comparison, the net EUM benefit included in PEPCO's 2003 GPC filing was a negative \$0.093 million. In response to Commission Data Request No. 1, Item 3, PEPCO explained that the decline in net EUM benefits of \$1.150 million from 2003 to 2004 was caused by several factors.¹⁸ First, EUM Capacity Sales, which are market driven, declined by approximately \$694,000 for the latest year ended February 7, 2004. This decrease in revenue was partially offset by a corresponding decrease in EUM Billing Credits to EUM participants of \$485,000 over the same period. In other words, if nothing else had changed, the decline in net EUM benefits would have been only \$694,000 minus \$485,000, or \$209,000. However, PEPCO also reports an increase in EUM Equipment Cost of \$934,000 due to its accelerated depreciation of the equipment.¹⁹ We quantify the impact of PEPCO's accelerated depreciation claim on this year's GPC below.

8. Continuing with the Phase II Settlement, Paragraph 5 clarifies that any GPC credit will be distributed to customers over a twelve-month period (on a cents per kWh basis). In addition, Paragraph 5 specifies that if the difference in actual versus intended GPC credits, to either class of customers, is greater than \$100,000 during a

¹⁵ PEPCO implemented the guaranteed rate reductions via its January 29, 2001, Compliance Filing.

¹⁶ As discussed below, residential customers will not receive any 2004 GPC bill credit since their guaranteed rate reduction exceeds the ratepayer's share of the generation procurement margins.

¹⁷ The Office of the People's Counsel of the District of Columbia ("OPC") submitted comments regarding PEPCO's net EUM benefit calculation which are discussed later in this Order.

¹⁸ Since the net EUM benefits are negative in both years, the decline of \$1.150 million can be arrived at by subtracting \$0.093 million from \$1.243 million.

¹⁹ This accelerated depreciation issue was identified in PEPCO's last GPC filing, but had no impact on net GPC credits since the accelerated depreciation applied to only one month in the period. *See F.C. 945*, Order No. 12738 at 5-6, rel. May 20, 2004.

given twelve-month period, PEPCO will adjust the GPC credit, as necessary, to reflect the amount of the difference, with interest.²⁰

9. In Order Nos. 12582 and 12635, the Commission concluded that the first GPC Application period began on August 15, 2002 and would extend until August 14, 2003. The Commission also ruled that the second GPC Application period would begin June 1, 2003 and end May 31, 2004. As of the date of PEPCO's 2004 GPC filing (i.e., April 28, 2004), only the first GPC Application Period had ended. Accordingly, PEPCO's 2004 GPC filing quantifies only the actual versus intended results of the first GPC Application Period, which are discussed below.

10. Finally, Paragraph 7 of the Phase II Settlement amends the GPC calculation to include any deferred fuel balance that remained on PEPCO's books at the close of the calendar month immediately preceding the asset sale. In its 2002 GPC filing, PEPCO reported an over-collection of \$13.4 million in its deferred fuel account, and this amount was included in the GPC credit for the first GPC Application period. Similarly, in its 2003 GPC filing, PEPCO included a deferred fuel balance credit of \$0.134 million to reflect the Company's share of the Conemaugh Generation Station's settlement adjustment to deferred fuel costs. In its 2004 GPC filing, PEPCO proposes to recover a deferred fuel *charge* of \$485,000 arising from a settlement of outstanding claims by Panda with respect to costs incurred by PEPCO prior to the completion of its generation sale. We have reviewed the Company's workpapers supporting its deferred fuel charge calculation and find the calculation both reasonable and consistent with Paragraph 7 of the Phase II Settlement.²¹

III. PEPCO's Proposed 2004 GPC

11. In its April 28, 2004 GPC Filing, Pepco indicates that the total generation procurement margin for the period February 8, 2003 through February 7, 2004 is \$38.6 million.²² According to Pepco, the customers' share of that amount equals \$27.16 million, or \$0.00237 per kWh.²³ Further, according to Pepco, after reducing the customers' share of the generation procurement margin for the guaranteed rate reductions already provided to customers beginning February 8, 2001, Pepco calculates that the GPC would provide non-residential customers in the District of Columbia with a net GPC credit of \$0.0013 per kWh. For residential customers, because the average customer's

²⁰ The GPC adjustment may be either positive (for an under-credit) or negative (for an over-credit).

²¹ The Commission notes that no party has taken issue with PEPCO's proposed deferred fuel charge recovery.

²² GPC Letter at 2. According to Pepco, the data used for the GPC margin calculations reflect the costs as paid by Pepco during the period under the Transition Power Agreement ("TPA") as amended. GPC Letter at 2-3.

²³ *Id.*

share of \$0.00237 per kWh is less than the guaranteed rate reduction of \$0.00277 per kWh, the residential GPC amount is zero.²⁴

12. Table 1 below presents the total 2004 GPC margins to be shared between PEPCO and DC ratepayers and compares the result to 2003. Note that the total 2004 GPC margin reflects SOS generation revenue and procurement expenses (including net EUM revenues), but excludes any deferred fuel cost recovery.

Table 1

	<i>12 Months Ended 2/7/04</i>	<i>12 Months Ended 2/7/03</i>
SOS Generation Revenue	\$254,330,059	\$244,042,576
Net EUM Revenue	(1,242,656)	(92,559)
SOS Procurement Expense	(214,483,531)	(190,987,906)
Total GPC Margin	\$38,603,871	\$52,962,111

13. As shown in Table 1, the Total GPC Margin declined from \$53.0 million for the twelve month period ended February 7, 2003 to \$38.6 million in 2004. The *primary* cause of this decline was an increase in SOS Procurement Expense of \$23.5 million, which will be discussed in detail below.

14. Table 2 shows the application of the sharing agreement contained in the Phase I Settlement to the 2004 results. After dividing the Total GPC Margin of \$38.604 million into tiers, the ratepayers' share (before guaranteed rate reduction offsets) is \$27.162 million.

Table 2

<i>Total GPC Margin</i>	<i>\$38,603,871</i>
<i>Customer Share of the Margins</i>	
80% of First \$20.0 million	\$16,000,000
60% of Remaining \$18.6 mil.	11,162,323
Total Customer Share	\$27,162,323

15. Since the ratepayers' share of PEPCO's GPC profit is to be distributed on a kWh basis, PEPCO appropriately divides the above \$27.162 million by total estimated distribution sales to arrive at an average (gross) GPC credit of 2.37 mills per kWh.²⁵ However, the Phase I Settlement provides for a reduction in the average GPC credit up to the amount of the guaranteed rate reduction received by each customer class. Since the Phase I Settlement's guaranteed rate reduction varies by class, the net GPC credit will also differ by class. This step in the calculation is summarized in Table 3 below.

²⁴ *Id.*

²⁵ PEPCO uses an estimated level of distribution sales of 11,452,446,000 kWh for the twelve-month period beginning June 1, 2004.

Table 3

	<i>Residential</i>	<i>Commercial</i>
Gross GPC Credit	\$0.00237	\$0.00237
Guaranteed Rate Reductions	0.00277	0.00109
Net GPC Credit	\$ 0	\$0.00128

16. Table 3 reveals that the guaranteed credit of the residential class exceeds its gross 2003 GPC Credit. Accordingly, residential customers would not receive any 2004 GPC bill credits, as filed.²⁶

17. Attachment C to PEPCO's 2004 GPC filing reports the actual versus intended payout results, by customer class, from the first GPC Application Period which ended August 14, 2003. As shown in Attachment C, residential customers received actual GPC credits of \$5.324 million, which is \$181,952 greater than intended. Per Paragraph 5 of the Phase II Settlement, PEPCO is entitled to recover the overpayment from residential customers via a reconciling adjustment to the GPC. However, since residential customers would not receive a 2004 GPC payout in PEPCO's filing, the Company proposes to defer the adjustment until such time as any funds are recovered from the Mirant bankruptcy proceeding, so as to avoid charging residential customers for the true-up at this time. If funds were to be recovered from Mirant, PEPCO states that the GPC for the current Application Period would be recalculated, and the necessary residential adjustment applied at that time.²⁷ With respect to commercial customers, Attachment C shows that actual GPC credits totaled \$36.417 million, or \$82,951 less than intended. Since this difference is less than \$100,000, no reconciling adjustment is required for commercial customers.

18. Finally, per Paragraph 7 of the Phase II Settlement, the deferred fuel charge associated with the Panda settlement must be subtracted from the net GPC credits shown in Table 3 to arrive at the total GPC credit to be applied to customer bills. For commercial customers, the final GPC credit is \$0.00128 minus \$0.00004, or \$0.00124 per kWh. For residential customers, PEPCO is again proposing to defer cost recovery.²⁸ When applied to forecast distribution sales, the commercial GPC Rider credit of

²⁶ Since PEPCO is the party at risk for recovery of the guaranteed rate reductions, residential customers would not be charged for the shortfall.

²⁷ In response to Commission Data Request No. 1, Item 7, PEPCO states that it has no knowledge regarding when a decision in the Mirant bankruptcy proceeding might be entered. As such, the residential deferral could extend *indefinitely*, with interest accruing at 9.09%.

²⁸ In other words, neither the residential true-up from the first Application Period (i.e., \$181,952), nor its share of Panda-related deferred fuel costs (i.e., \$100,376) would be collected from residential customers at this time.

\$0.00124 per kWh would provide such DC customers with bill credits totaling approximately \$11.445 million for the third GPC Application Period.²⁹

IV. Comments and Reply Comments

19. OPC's comments are limited to two areas. Specifically, OPC argues that PEPCO has improperly: 1) employed *accelerated* depreciation of its EUM Equipment to inflate its EUM program expenses; and 2) used the (higher) energy rates negotiated in Amendment No. 2 to the Transition Power Agreement ("TPA") with Mirant to calculate SOS Procurement Expense. OPC claims that the above changes in the GPC "formula" combine to reduce significantly the size of the Generation Procurement Margin, which is shared with ratepayers. As discussed below, OPC recommends that the Commission: a) reject PEPCO's use of accelerated depreciation; and b) require PEPCO to employ the *original* TPA energy rates to calculate SOS Procurement Expense.³⁰

20. With respect to the accelerated depreciation issue, OPC notes that PEPCO actually began to use the methodology on February 1, 2003, in time for the method to be incorporated in the final month used in PEPCO's 2003 GPC calculation. Indeed, OPC raised the issue in its 2003 GPC comments, although it did not have a material impact on the 2003 GPC Credit calculation.³¹ In its current comments, OPC discusses PEPCO's previous explanation for using accelerated depreciation. In essence, PEPCO had argued in its 2003 GPC reply comments that standard accounting principles required that equipment be depreciated over its useful life. Since PEPCO did not expect the EUM Program to be viable beyond December 31, 2004, it began accelerating the depreciation of its EUM Equipment in February 2003 in order to complete the required amortization by December 31, 2004.

21. OPC argues that such accounting treatment would be appropriate only if EUM programs were regulated services. OPC notes that Paragraph 2 of the Non-Unanimous Settlement deregulated EUM Programs as of January 1, 2001. OPC argues that upon deregulation, EUM assets:

...became for PEPCO both a market risk and an opportunity. Full recovery of the investment was set at risk, but PEPCO also was given the opportunity to not only recover the investment but to earn an unregulated return on that investment. ... [T]he fact PEPCO has failed to reap the potential market benefits of the deregulation of EUM services provides no basis for now treating the programs as

²⁹ Multiplying \$0.00124 times 9,230,186,000 kWhs produces a total credit of \$11.445 million.

³⁰ OPC quantifies the combined impact of its recommendations on the 2004 GPC in Attachment A to its comments. See Table 4 below.

³¹ By Order No. 12738, released May 20, 2003, the Commission determined that the impact of using accelerated depreciation for just *one month* was too small to affect the net GPC credit. Accordingly, the Commission approved PEPCO's proposed 2003 GPC Rider, as filed.

if they remained regulated services and recovering the full costs of the programs from District consumers via the GPC. OPC Comments at 5.

22. With respect to the TPA issue, OPC notes that as a result of PEPCO's Settlement with Mirant, Amendment No. 2 to the TPA increased the summer energy rate from \$35.50 / MWh to \$41.90 / MWh, and the winter energy rate from \$25.30 / MWh to \$31.70 / MWh, beginning October 1, 2003. OPC states that PEPCO has used the Amendment No. 2 rates over the period October 1, 2003 through February 7, 2004 to calculate SOS Procurement Expense. OPC argues that the original TPA energy rates should have been used in the 2004 GPC calculation. OPC states that the TPA is part of the overall Generation Asset Sales ("GAS") agreement. As such, OPC claims that the TPA is covered by a corporate guarantee of performance on all individual transactions comprising the GAS agreement. OPC concludes that any increased costs resulting from the renegotiation of the TPA should be borne by PEPCO, until such time as PEPCO is able to recover the costs through the applicable performance guarantee.

23. The impact of OPC's recommendations on the gross GPC credit is summarized in Table 4 below. The OPC recommended GPC margin is \$53.6 million, or \$15.0 million greater than PEPCO's total. The \$15.0 million margin increase is derived from a recommended reduction in EUM and SOS Procurement Expenses of approximately \$1.0 million and \$14.0 million, respectively. Upon application of the margin sharing formula, ratepayers' share would come to \$36.165 million, which equates to a gross GPC Credit of \$0.00316 per kWh.

Table 4

<i>Total GPC Margin per OPC</i>	<i>\$53,609,704</i>
<i>Customer Share of the Margins</i>	
80% of First \$20.0 million	\$16,000,000
60% of Remaining \$33.6 mil.	<u>20,165,822</u>
Total Customer Share	\$36,165,822
Total Distribution kWhs	11,452,446,000
Gross GPC Credit per kWh	\$0.00316

24. Upon subtracting each customer class's guaranteed rate reduction and deferred fuel charge share (neither of which are in dispute) from the above gross GPC Credit, OPC arrives at its recommended 2004 GPC credits of \$0.00034 and \$0.00203 per kWh, respectively, for residential and commercial customers.³² When applied to forecast

³² We note that OPC's residential result of \$0.00034 reflects PEPCO's Panda-related deferred fuel costs, but does not include the required residential true-up from the first Application Period.

distribution sales, these GPC credits would provide DC customers with bill credits totaling approximately \$19.493 million for the third GPC Application Period, which is \$8.048 million (i.e., \$19.493 million minus \$11.445 million) more than proposed by PEPCO.

25. PEPCO responds to each of OPC's recommendations. With respect to the TPA issue, PEPCO first notes that OPC is objecting to the inclusion of the amounts actually paid by PEPCO to Mirant. PEPCO states that OPC's only justification for its position is a reference to an "unexplained" and "unsupported" corporate guarantee. PEPCO opines that perhaps OPC's reference is to Mirant's corporate guarantee. However, Mirant filed for bankruptcy protection, and PEPCO has filed a \$105 million claim against Mirant, which is pending.³³

26. PEPCO also notes that in approving the Phase I Settlement, the Commission explicitly recognized that the price of power during the rate cap period was unknown.³⁴ Accordingly, PEPCO argues that contrary to OPC's position that ratepayers are entitled to the benefits of the difference in capped generation rates and the original TPA prices, there could not have been any guarantee in the Phase I Settlement that the cost of SOS energy would be lower than PEPCO's capped generation rates (i.e., produce a margin), much less result in some fixed cost differential which would exist throughout the 4-year rate cap period.³⁵

27. Moreover, PEPCO argues that OPC's position is inconsistent with the explicit language of Order No. 11576, wherein the Commission stated that "PEPCO's actual purchased power costs will be reflected in the [GPC] credit." Similarly, OPC's position cannot be reconciled with Section 4.01 of the Phase I Settlement which reads: "If the Company realizes an annual profit from the sale of generation services, the gain will be shared with all customers." PEPCO claims that OPC's proposal is simply an attempt to penalize PEPCO for Mirant's bankruptcy filing, over which PEPCO had no control. PEPCO concludes by stating that there is no support for imputing something other than the actual cost of power within the GPC calculation, and therefore OPC's position should be rejected.³⁶

28. With respect to the depreciation issue, PEPCO argues that there is no basis for support in either the Phase I or II Settlements for OPC's position regarding the use of accelerated depreciation for EUM equipment. PEPCO claims that its decision to accelerate the amortization rate of EUM equipment in early 2003 was a "required and appropriate accounting technique when the useful life of the EUM equipment is expected

³³ See PEPCO Reply Comments at 3-4.

³⁴ PEPCO notes that the TPA was not in existence at the time the Phase I Settlement was approved.

³⁵ See PEPCO Reply Comments at 4.

³⁶ *Id.* at 5.

to conclude on December 31, 2004.”³⁷ PEPCO states that the value of curtailable load in the PJM market deteriorated substantially in 2003, with the result that earnings from the programs were expected to be insufficient to cover operating expenses after December 31, 2004.³⁸ PEPCO claims that this outcome would occur despite the fact that PEPCO took numerous steps to modify the programs to increase their economic viability, including a drastic reduction in incentives paid to program participants. PEPCO plans to suspend the programs on December 31, 2004, at which time the useful life of the EUM equipment will also terminate.³⁹

29. By way of further response, PEPCO references Paragraph 2 of the Phase II Settlement. Paragraph 2 requires PEPCO to continue the EUM programs through December 31, 2004 and to share any program earnings with District customers through the GPC mechanism. PEPCO states that it continues to comply with both provisions. Moreover, Paragraph 2 states that for purposes of calculating the GPC Rider, the costs of EUM programs (including equipment costs) will be included as part of the costs of providing SOS. PEPCO states that SOS is a regulated service. However, PEPCO argues that whether the EUM programs were deemed to be regulated or deregulated, the proper accounting technique would be the same, i.e., accelerated depreciation would apply. PEPCO states that the accelerated depreciation costs that are included in its GPC filing are the same costs that appear on the Company’s books, pursuant to Generally Accepted Accounting Principles. PEPCO recommends that the Commission reject OPC’s position with respect to EUM program costs and approve the Company’s proposed GPC as filed.⁴⁰

30. Finally, since the Commission’s approval of the GPC will now occur after the beginning of the June 2004 billing month, PEPCO formally requests that the Commission allow for an effective date to coincide with the *beginning* of a new billing month, with the corresponding rate effective period to continue through twelve complete billing months.

V. DECISION

31. Our analysis indicates that if we reject OPC’s position with respect to the TPA, residential customers would not receive a 2004 GPC bill credit, irrespective of the disposition of the accelerated depreciation issue.⁴¹ Notwithstanding this observation, we have decided to reject OPC’s position regarding the TPA. Amendment No. 2 to the TPA

³⁷ *Id.* at 6.

³⁸ Apart from its Reply Comments, PEPCO filed its “Report on the Future of Dispatchable Energy Use Management Programs”, as required, on July 1, 2004. In that report, PEPCO forecasts that EUM Program net revenues, i.e., revenue less O&M and bill credit costs, would exhibit a loss between \$311,000 and \$610,000 over the 2004-2007 period, if continued.

³⁹ *See* PEPCO Reply Comments, at 6-7.

⁴⁰ *Id.* at 7-9.

⁴¹ In other words, any resulting GPC credit would remain below the level of the residential guaranteed rate reduction.

was approved by the Commission, in part, to mitigate the significant risk of District customers having to pay high market prices for SOS energy, in the event that Mirant was successful in voiding the TPA in bankruptcy court. As such, Amendment No. 2 has provided significant benefits to the District's SOS customers. In light of these tangible benefits, along with what appears to be a complete lack of support for OPC's argument in either the Phase I or II Settlements, we believe that OPC's TPA position must be rejected.

32. In order to put the EUM equipment expense issue in perspective, the Commission first calculated the impact on the 2004 GPC if we were to adopt OPC's position on accelerated depreciation, but not its position on the TPA. In short, OPC seeks to reduce EUM equipment expense by \$1.04 million which, after application of the sharing formula, would increase ratepayers' share of GPC margins by \$0.624 million (i.e., \$1.04 million times 60%) before guaranteed rate reductions. Accordingly, the gross GPC credit shown in Table 3 above would increase to \$0.00242 per kWh. However, since the residential guaranteed rate reduction would remain unchanged at \$0.00277, we can conclude that only the commercial GPC bill credit would be affected under this scenario. Specifically, the net GPC credit for commercial customers would increase \$0.00005 per kWh, and produce an additional \$461,509 in bill credits.⁴²

33. In our view, the accelerated depreciation issue should be treated strictly as an accounting matter. In that regard, OPC states that PEPCO's accounting treatment would be appropriate only in the case where EUM programs were regulated services. PEPCO states that the appropriate (and required) accounting treatment is the same whether EUM programs were to be deemed regulated or not. We believe that PEPCO is correct to apply accelerated depreciation to EUM equipment assuming that the useful life of the equipment will indeed end on December 31, 2004.

34. We have reviewed Paragraph 2 of the Phase II Settlement that was approved by the Commission in Order No. 11845. Paragraph 2 states, in part, that:

[T]he EUM Programs will become deregulated as of January 1, 2001, and PEPCO will then be free to change the level of the credit payments and other EUM parameters. ... For purposes of calculating the Generation Procurement Credit Rider, as discussed in paragraph 5 hereof, the costs of the EUM Programs (including equipment costs and the costs of the credits) will be included as part of the costs of providing Standard Offer Service. ... At least six months prior to January 1, 2005, the Company shall notify the Commission and the parties of its plans with respect to the disposition and operation of the EUM Programs after December 31, 2004.

⁴² Subtract \$0.00237 in Table 3 from the above \$0.00242 to get \$0.00005 per kWh, times 9,230,186,000 distribution kWhs, to arrive at \$461,509.

35. Inasmuch as PEPCO has determined that the current EUM Programs are no longer viable, and it plans to suspend the programs as of December 31, 2004, generally accepted accounting principles would require PEPCO to amortize the remaining cost of the EUM equipment by December 31, 2004. Since the Phase II Settlement clearly directs that equipment costs be included in the determination of net EUM revenues, we must conclude that PEPCO's net EUM revenue computation is appropriate and should be approved by the Commission. However, should PEPCO decide not to suspend the EUM Programs as of December 31, 2004, we will revisit this issue.

36. Accordingly, based upon our review, it is the determination of the Commission that the proposed GPC filed by PEPCO on April 28, 2004, accurately comports with applicable provisions in the Phase I and Phase II Settlements. The total GPC bill credits of \$11.445 million will provide significant benefits to the District's commercial customers.

37. Additionally, by this Order, we grant PEPCO's request and set an effective date to coincide with the beginning of a new billing month, and direct that the GPC Application Period continue through twelve complete billing months.⁴³

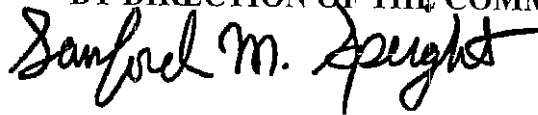
THEREFORE, IT IS ORDERED THAT:

38. The proposed Generation Procurement Credit Rider filed by Potomac Electric Power Company on April 28, 2004, is hereby **APPROVED**;

39. Application of the Generation Procurement Credit Rider, filed by Potomac Electric Power Company on April 28, 2004, shall commence with the billing cycle beginning September 1, 2004 and continue through twelve complete billing months.

A TRUE COPY:

BY DIRECTION OF THE COMMISSION:



CHIEF CLERK

**SANFORD M. SPEIGHT
ACTING COMMISSION SECRETARY**

⁴³ While PEPCO did not explain its request for a beginning of the month start to the GPC Application Period, we assume that PEPCO wishes to avoid any potential customer confusion, such as what may have occurred with the August 15, 2002 start of the 2002 GPC Application Period.