

  
Councilmember Kenyan R. McDuffie

A BILL

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend, on an emergency basis, the Electric Company Infrastructure Improvement Financing Act of 2014 to authorize the collection and use by the District of Columbia and the electric company of certain charges to finance the undergrounding of certain electric power lines and ancillary facilities, and to repeal Title II of that act, which provided authorization for the issuance of bonds; and to amend the District of Columbia Recordation Tax Act and sections 47-902, 47-2005, and 47-2206 of the District of Columbia Official Code to make conforming amendments.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Electric Company Infrastructure Improvement Financing Emergency Amendment Act of 2017".

Sec. 2. The Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1311.01 *et seq.*), is amended as follows:

(a) Section 101 (D.C. Official Code § 34-1311.01) is amended as follows:

(1) Paragraphs (1), (2), (3), (4), (6), and (8) are repealed.

(2) Paragraph (10) is amended as follows:

(A) Strike the phrase "conduits and duct banks for the distribution of electricity within the District," and insert the phrase "conduits, duct banks" in its place.

(B) Strike the phrase "similar facilities" and insert the phrase "similar facilities for the distribution of electricity within the District" in its place.

37 (3) Paragraph (12) is amended by striking the phrase “financing costs, to fund  
38 any required reserves with respect to the Bonds and to maintain any coverage ratios required by  
39 the financing documents” and inserting the phrase “DDOT Underground Electric Company  
40 Infrastructure Improvement Costs for the applicable year” in its place.

41 (4) Paragraph (13) is amended to read as follows:

42 “(13) “DDOT Underground Electric Company Infrastructure Improvement  
43 Charge” means a charge imposed by the District on the electric company pursuant to a financing  
44 order issued by the Commission, which charge shall be used by the District to pay the DDOT  
45 Underground Electric Company Infrastructure Improvement Costs.”.

46 (5) Paragraph (14) is amended by striking the phrase “construction plans,” and  
47 inserting the phrase “construction plans, contingency for the cost to complete and place in  
48 service the electric plant to be installed in the applicable biennial Underground Infrastructure  
49 Improvement Projects Plan,” in its place.

50 (6) A new paragraph (14A) is added to read as follows;

51 “(14A) “DDOT Underground Electric Company Infrastructure Improvement  
52 Fund” means the fund established by section 303a.”.

53 (7) Paragraphs (15), (16), and (17) are repealed.

54 (8) Paragraph (19) is amended as follows:

55 (A) Strike the phrase “including the electric company’s portion of  
56 conduit” and insert the phrase “that may include underground conduit and duct banks for the  
57 distribution of electricity within the District, electrical vaults, manholes, transformers and  
58 transformer pads, and other ancillary electric distribution infrastructure to be procured,  
59 constructed, or installed by the electric company and” in its place.

60 (B) Strike the phrase “Improvements that is required” and insert the  
61 phrase “Improvements (except as otherwise approved by the Commission), that is included in a  
62 biennial Underground Infrastructure Improvement Projects Plan approved by the Commission,  
63 and that is required” in its place.

64 (9) Paragraph (21) is amended by striking the phrase “ Activity, and” and  
65 inserting the phrase “Activity, and contingency for the cost to complete and place in service the  
66 electric plant to be installed in the applicable biennial Underground Infrastructure Improvement  
67 Projects Plan, and” in its place.

68 (10) Paragraph (24) is amended to read as follows:

69 “(24) “Financial advisor” means an entity whose services were retained by the  
70 Commission on July 31, 2014, as may be extended by the Commission from time to time, and  
71 any successor or replacement of the entity, to assist the Commission in the issuance, amendment,  
72 or administration of a financing order.”.

73 (11) Paragraphs (25) and (26) are repealed.

74 (12) Paragraph (27) is amended as follows:

75 (A) Strike the phrase “creation of the DDOT Underground Electric  
76 Company Infrastructure Improvement Property and the imposition and periodic true up” and  
77 insert the word “imposition” in its place.

78 (B) Strike the phrase “Charges.” and insert the phrase “Charges and the  
79 imposition and periodic true-up of the Underground Rider.” in its place.

80 (13) Paragraph (31) is repealed.

81 (14) Paragraph (35) is repealed.

82 (15) Paragraphs (39) and (40) are repealed.

(16) Paragraph (41) is amended by striking the phrase “Activity to be undertaken” and inserting the phrase “Activity planned to be undertaken in a 2-year period, which may be amended from time to time with the approval of the Commission” in its place.

(17) Paragraph (42) is amended as follows:

(A) Strike the word “certain” and insert the phrase “all distribution service” in its place.

(B) Strike the phrase “electric company for” and insert the phrase “electric company (except for customers served under the electric company’s residential aid discount or a succeeding discount program) for” in its place.

(18) A new paragraph (42A) is added to read as follows:

“(42A) “Underground Rider” means an annually adjusted rider to the electric company’s volumetric distribution service rates paid by all distribution service customers of the electric company (except for customers served under the electric company’s residential aid discount or a succeeding discount program) for its recovery of an amount equal to the aggregate of the DDOT Underground Electric Company Infrastructure Improvement Charges.”.

(19) Paragraph (43) is repealed.

(b) Section 102 (D.C. Official Code § 34-1311.02) is amended as follows:

(1) Paragraph (1) is amended by striking the phrase “users of electricity.” and inserting the phrase “users of electricity, and has otherwise adversely affected the general welfare of the public.” in its place.

(2) Paragraph (2) is amended as follows:

(A) Strike the phrase “resiliency, reliability,” and insert the phrase “resiliency,” in its place.

(B) Strike the phrase “impacts on the District’s electricity users caused by repeated power outages.” and insert the phrase “impacts caused by repeated power outages on the District’s residents, businesses, workers, and visitors.” in its place.

(3) Paragraphs (3) and (4) are repealed.

(4) Paragraph (5) is amended to read as follows:

“(5) Electric system modernization will require an unprecedented investment in the electric distribution infrastructure in the District.”.

(5) Paragraph (7) is amended as follows:

(A) Strike the phrase “recovered through” and insert the phrase “paid by the District from” in its place.

(B) Strike the phrase “Charge or the Underground” and insert the phrase “Charge or recovered by the electric company through the Underground” in its place.

(6) Paragraph (8) is amended as follows:

(A) Strike the phrase “and June 30th thereafter until December 31, 2027, or the sooner” and insert the phrase “thereafter until the” in its place.

(B) Strike the phrase “award construction contract” and insert the phrase “to award construction contracts” in its place.

(c) Title II (D.C. Official Code §§ 34-1312.01 through 34-1312.12) is repealed.

(d) Sections 301, 302, and 303 (D.C. Official Code §§ 34-1313.01, 34-1313.02, and 34-1313.03) are amended to read as follows:

“Sec. 301. Commission authorizations.

“(a) The Commission is authorized to issue financing orders upon application by the electric company. The Commission may include its financing order as part of its order issued

with respect to a biennial Underground Infrastructure Improvement Projects Plan. All financing orders, among their other provisions, shall:

“(1) Describe the DDOT Underground Electric Infrastructure Improvement Activities to be paid through the DDOT Underground Electric Company Infrastructure Improvement Charge for the next 2-year period;

“(2)(A) Assess the DDOT Underground Electric Company Infrastructure Improvement Charge on the electric company for the next 2-year period sufficient to fully satisfy the DDOT Underground Electric Company Infrastructure Annual Revenue Requirement to enable DDOT Underground Electric Company Infrastructure Improvement Activity to be undertaken in the next 2-year period plus an amount necessary to recover any DDOT Underground Electric Company Infrastructure Improvement Costs incurred by DDOT but not reimbursed through prior collections of the DDOT Underground Electric Company Infrastructure Improvement Charge; provided, that the DDOT Underground Electric Company Infrastructure Charges approved by the Commission under this act shall not exceed \$187.5 million in the aggregate; provided further, that any amounts collected with respect to the DDOT Underground Electric Company Infrastructure Improvement Charge and not expended for DDOT Underground Electric Company Infrastructure Improvement Costs as contemplated by this act shall be refunded to the electric company and thereafter credited to customers as the Commission may direct; and

“(B) By the 10th day of each month during the applicable 2-year period, the electric company shall remit a payment equal to 1/24 of the DDOT Underground Electric Company Infrastructure Improvement Charges approved for the applicable 2-year period pursuant to the financing order to the DDOT Underground Electric Company Infrastructure

Improvement Fund established pursuant to section 303a;

“(3) Assess the Underground Rider for the next 2-year period among the distribution service customer classes of the electric company in accordance with the distribution service customer class cost allocations approved by the Commission for the electric company and in effect pursuant to the electric company’s most recently decided base rate case in an amount sufficient for the electric company to recover the DDOT Underground Electric Company Infrastructure Charge; provided, that no such charges shall be assessed against the electric company’s residential aid discount customer class or any succeeding customer class approved by the Commission for the purpose of providing economic relief to a specified low-income customer class; provided further, that the Underground Rider shall be billed to customers by the electric company on a volumetric basis;

“(4) Describe the true-up mechanism as provided in section 312 to reconcile actual collections of the Underground Rider with forecasted collection on at least an annual basis to ensure that the collections of the Underground Rider are adequate for the electric company to recover an amount equal to the aggregate amount of the DDOT Electric Company Infrastructure Improvement Charges;

“(5) Prescribe the filing of billing and collection reports relating to the DDOT Underground Electric Company Infrastructure Improvement Charges and the Underground Rider; and

“(6) Consistent with this act, contain such other findings, determinations, and authorizations as the Commission considers necessary or appropriate.

“(b) All financing orders shall be operative and in full force and effect from the time fixed for them to become effective by the Commission.

175           “(c) The financing order shall provide that except to implement any true-up mechanism  
176 as required by section 312, the Commission may not reduce, impair, postpone, terminate, or  
177 otherwise adjust the Underground Rider approved in the financing order unless it has similarly  
178 adjusted the DDOT Underground Electric Company Infrastructure Improvement Charges by an  
179 equal amount.

180           “(d) The electric company shall have no liability or obligation with respect to the DDOT  
181 Underground Electric Company Infrastructure Improvement Charge except for the 2-year period  
182 that is the subject of the financing order then in effect.

183           “Sec. 302. Application for financing order.

184           “(a) The electric company may include its application for a financing order as part of its  
185 application for approval of a biennial Underground Infrastructure Improvement Projects Plan.

186           “(b)(1) Concurrently with each application filed for approval of a biennial Underground  
187 Infrastructure Improvement Projects Plan, the electric company shall file for the Commission’s  
188 consideration and decision an application for a financing order for the 2-year period  
189 corresponding to the biennial Underground Infrastructure Improvement Projects Plan.

190           “(2) The financing order application and all subsequent applications by the  
191 electric company for a financing order shall contain:

192                       “(A) The DDOT Underground Electric Company Infrastructure  
193 Improvement Charges for the next 2-year period;

194                       “(B) A calculation by the electric company of the Underground Rider by  
195 distribution service customer class estimated to be sufficient to generate an amount equal to the  
196 DDOT Underground Electric Company Infrastructure Improvement Charges for the next 2-year  
197 period; and



198 “(C) A proposed form of public notice of the application suitable for  
199 publication by the Commission, which notice may be combined with the form of public notice  
200 for the application for approval of the biennial Underground Infrastructure Improvement Projects  
201 Plan.

202 “Sec. 303. Consideration of applications for a financing order.

203 “(a)(1)(A) The Commission shall publish notice to the public of an application for a  
204 financing order before deciding upon the application for a financing order and provide for a  
205 period of no less than 60 days after publication of the notice for public comment and 14 days  
206 after publication of the notice for filing of motions to intervene.

207 “(B) The electric company shall provide notice of the application as  
208 provided in section 8 of the Public Utilities Commission Act (D.C. Official Code § 34-909), as  
209 that section reads as of the effective date of this act, or as amended or superseded.

210 “(2) The District, OPC, and DDOT shall each be a party to the Commission  
211 proceeding on the application, as a matter of right.

212 “(3)(A) Any other person desiring to be heard on the application shall file a  
213 motion to intervene with the Commission requesting to be made a party to the proceeding.

214 “(B) The applicant and any party to the proceeding may file an answer or  
215 oppose the granting of the motion.

216 “(C) The Commission shall, by order, approve or deny the motion at its  
217 reasonable discretion.

218 “(b)(1) The Commission shall decide upon an application for a financing order based  
219 upon the pleadings in the matter and, if no protest or objection is filed in response to the  
220 Commission’s public notice of the application, at its discretion, without a hearing.

221 “(2) A formal evidentiary hearing shall be required only if contested issues of  
222 material fact are present and those issues cannot be resolved by the Commission based on the  
223 pleadings and discovery responses filed, if any, in the matter. Except as provided in paragraph  
224 (3) of this subsection, the Commission may approve, approve with condition, modify, or reject  
225 the application in whole or in part, as it considers necessary and appropriate.

226 “(3) The Commission may not approve the DDOT Underground Electric  
227 Company Infrastructure Improvement Charges unless it shall have also approved the  
228 Underground Rider in an amount reasonably expected to generate sufficient revenues to permit  
229 the electric company to recover the DDOT Underground Electric Company Infrastructure  
230 Improvement Charges.

231 “(c) The Commission is authorized to issue a financing order if the Commission finds  
232 that the projected DDOT Underground Electric Company Infrastructure Improvement Costs to  
233 be funded by the DDOT Underground Electric Company Infrastructure Improvement Charges  
234 are prudent and that the amount of the DDOT Underground Electric Company Infrastructure  
235 Improvement Charges is reasonable and that the Underground Rider reasonably can be expected  
236 to generate sufficient revenues to permit the electric company to recover the DDOT  
237 Underground Electric Company Infrastructure Improvement Charges.

238 “(d)(1) The Commission shall expedite its consideration of applications for financing  
239 orders.

240 “(2) The Commission shall issue its decision on the electric company's application no  
241 later than 60 days following the closing of the period for public comment upon the application;  
242 provided, that if a protest or objection to the application that can be resolved without an  
243 evidentiary hearing is timely filed with the Commission, the period for the Commission's

244 decision shall be extended by an additional 15 days; provided further, that the time may be tolled  
245 at the Commission's reasonable discretion for periods in which it determines the electric  
246 company's application is deficient.

247 “(3) If an evidentiary hearing is required, the Commission shall issue a decision no  
248 more than 60 days following the close of the hearing record.

249 “(e)(1) The Commission is authorized to retain the services of a financial advisor to assist  
250 it in its consideration of an application for a financing order, and in the formulation and  
251 administration of a financing order.

252 “(2) Notwithstanding section 8(a)(3) of the Public Utilities Commission Act (D.C.  
253 Official Code § 34-912(a)(3)), the Commission shall pay the financial advisor amounts due from  
254 the Public Service Commission Agency Fund pursuant to section 8 of the Public Utilities  
255 Commission Act (D.C. Official Code § 34-912), with any subsequent amounts due to the  
256 financial advisor paid in accordance with this act.”.

257 (e) A new section 303a is added to read as follows:

258 “Sec. 303a. DDOT Underground Electric Company Infrastructure Improvement Fund.

259 “(a) There is established as a special fund the DDOT Underground Electric Company  
260 Infrastructure Improvement Fund (“Fund”), which shall be administered by the Director of  
261 DDOT in accordance with subsection (c) of this section.

262 “(b) All payments from the electric company of the DDOT Underground Electric  
263 Company Infrastructure Improvement Charges shall be deposited in the Fund.

264 “(c) The Fund shall be used solely to pay for DDOT Underground Electric Company  
265 Infrastructure Improvement Costs.

266 “(d) The money deposited into the Fund, and interest earned, shall not revert to the

unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time.

“(e) Subject to authorization in an approved budget and financial plan, any funds appropriated in the Fund shall be continually available without regard to fiscal year limitation.”.

(f) Sections 304, 305, and 306 (D.C. Official Code §§ 34-1313.04, 34-1313.05, and 34-1313.06) are repealed.

(g) A new section 306a is added to read as follows:

“Sec. 306a. Commission’s authority to terminate.

“Notwithstanding any other provision of law, the Commission shall have the authority to terminate any financing order issued in Formal Case No. 1121 before the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184); provided, that no bonds have been issued pursuant to such financing order.”.

(h) Section 307 (D.C. Official Code § 34-1313.07) is amended as follows:

(1) Subsection (a) is amended to read as follows:

“(a) Within 45 days after the effective date of the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184), and, except as provided in subsection (d) of this section, every 2 years thereafter, the electric company and DDOT shall jointly file with the Commission and concurrently serve upon OPC an application for approval of their biennial Underground Infrastructure Improvement Projects Plan.”.

(2) Subsection (b) is amended by striking the word “triennial” both times it appears and inserting the word “biennial” in its place.

290 (3) Subsection (c) is amended as follows:

291 (A) Strike the word “triennial” and insert the word “biennial” in its place.

292 (B) Strike the phrase “Plan.” and insert the phrase “Plan; provided, that

293 no such charges shall be assessed against customers served under the electric company’s

294 residential aid discount or a succeeding discount program.” in its place.

295 (4) A new subsection (d) is added to read as follows:

296 “(d) The Commission, on its own motion or upon motion of the electric company, the

297 District, OPC, or DDOT, or other person made a party pursuant to section 303(a)(3), may hold in

298 abeyance or waive the obligation to file an application for approval of a biennial Underground

299 Infrastructure Improvement Projects Plan and an application for a financing order for the

300 corresponding period upon a finding of good cause as necessary or desirable:

301 “(1) To protect public safety;

302 “(2) To avoid or minimize unreasonable project costs;

303 “(3) Because additional DDOT Underground Electric Company Infrastructure

304 Improvement Activity or Electric Company Infrastructure Improvement Activity are unnecessary

305 to meet the purposes of this act;

306 “(4) Because the electric company’s liability with respect to the DDOT

307 Underground Electric Company Infrastructure Improvement Charges can reasonably be

308 demonstrated to contribute materially to an adverse credit action by a rating agency, including a

309 down grade or placement on credit watch; or

310 “(5) To otherwise promote the public interest.”.

311 (i) Section 308 (D.C. Official Code § 34-1313.08) is amended as follows:

312 (1) Subsection (a) is amended as follows:

(A) The lead-in text is amended by striking the word “triennial” and inserting the word “biennial” in its place.

(B) Paragraph (1)(A) is amended by striking the phrase “District over the preceding 3 years” and inserting the phrase “District since January 1, 2010 through the most recently completed calendar year” in its place.

(C) Paragraph (2) is amended as follows:

(1) Strike the phrase “interruptions (inclusive” and inserting the phrase “interruptions that affect the public welfare (inclusive” in its place.

(2) Strike the phrase “District, the most recent 3 calendar years average of the following,” and inserting the phrase “District since January 1, 2010 through the most recently completed calendar year, averaged using the following data,” in its place.

(3) Strike the phrase “interruption on” and insert the phrase “interruption per cost of undergrounding on” in its place.

(D) Paragraph (3) is amended as follows:

(i) Strike the phrase “company as follows:” and insert the phrase “company or DDOT, as applicable, as follows:” in its place.

(ii) Subparagraph (E) is amended by striking the phrase “funded by DDOT” and inserting the phrase “funded by the Underground Project Charge and DDOT” in its place.

(iii) Subparagraph (G) is amended by striking the word “and”.

(iv) Subparagraph (H) is amended by striking the period and inserting the phrase “; and” in its place.

(v) A new subparagraph (I) is added to read as follows:

336 “(I) A status report and an explanation of the reasons why  
337 DDOT Underground Electric Company Infrastructure Improvement Activity or Electric  
338 Company Infrastructure Improvement Activity associated with projects contained in a biennial  
339 Underground Infrastructure Projects Plan previously approved by the Commission have not been  
340 completed and the dates upon which the projects are expected to be completed.”.

341 (2) Subsection (b) is amended as follows:

342 (A) The lead-in text is amended by striking the phrase “after the  
343 Underground” and inserting the phrase “after the biennial Underground” in its place.

344 (B) Paragraph (2) is amended by striking the word “and” at the end.

345 (C) Paragraph (3) is amended by striking the period and inserting the  
346 phrase “; and” in its place.

347 (D) A new paragraph (4) is added to read as follows:

348 “(4) The ability to complete and place in service the feeder circuits to be  
349 undergrounded pursuant to the biennial Underground Infrastructure Improvement Projects Plan  
350 from funding generated by the DDOT Underground Electric Company Infrastructure  
351 Improvement Charges and the Underground Project Charge for the corresponding plan period.”.

352 (3) Subsection (c) is amended as follows:

353 (A) The lead-in text is amended by striking the phrase “for the  
354 Underground” and inserting the phrase “for the biennial Underground” in its place.

355 (B) Paragraph (1) is amended by striking the phrase “costs shown” and  
356 inserting the phrase “costs that correspond with an itemized list of the Electric Company  
357 Infrastructure Investment Activity shown” in its place.

358 (C) Paragraph (2) is amended by striking the phrase “Costs;” and

inserting the phrase “Costs that correspond with an itemized list of the DDOT Underground Electric Company Infrastructure Improvement Activity;” in its place.

(D) Paragraph (4) is amended by striking the word “annual” and inserting the word “biennial” in its place.

(E) Paragraph (6)(A)(iv) is amended as follows:

(i) Strike the phrase “requirement, rate of” and insert the phrase “requirement, including the rate of” in its place.

(ii) Strike the phrase “rate base” and insert the phrase “base rate” in its place.

(4) Subsection (d) is amended by striking the word “customer”.

(j) Section 309 (D.C. Official Code § 34-1313.09) is amended as follows;

(1) Subsection (a)(1) is amended as follows:

(A) Strike the sentence “Before deciding upon an application for an order approving the triennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days for public comment and filing of motions to intervene.” and insert the sentence “Before deciding upon an application for an order approving the biennial Underground Infrastructure Improvement Projects Plan, the Commission shall first publish notice to the public of the application and provide for a period of no less than 60 days after publication of the notice for public comment and 14 days after publication of the notice for filing of motions to intervene.” in its place.

(B) Strike the phrase “to its customers in the District”.

(2) Subsections (b), (c), and (d) are amended by striking the word “triennial”



wherever it appears and inserting the word “biennial” in its place.

(k) Section 310 (D.C. Official Code § 34-1313.10) is amended as follows:

(1) Subsection (a) is amended by striking the word “triennial” both times it appears and inserting the word “biennial” in its place.

(2) Subsection (c) is amended as follows:

(A) Paragraph (2) is amended as follows:

(i) Strike the phrase “Charges to customers” and insert the phrase “Charges to distribution service customers” in its place.

(ii) Strike the phrase “surcharge;” and insert the phrase “surcharge; provided, that no such charges shall be assessed against customers served under the electric company’s residential aid discount or a succeeding discount program;” in its place.

(B) Paragraph (3) is amended by striking the phrase “rate base” and inserting the phrase “base rate” in its place.

(3) Subsection (d) is amended as follows:

(A) Strike the phrase “\$500 million” and insert the phrase “\$250 million” in its place.

(B) Strike the phrase “Commission, included” and insert the phrase “Commission in the most recently decided base rate case, included” in its place.

(l) Section 311 (D.C. Official Code § 34-1313.11) is amended by adding a new subsection (c) to read as follows:

“(c) The transfer of real and personal property between the electric company and the District, including DDOT or any other District agency or instrumentality, pursuant to subsection (a) of this section or which is included in, or forms a part of, the DDOT Underground Electric

Company Infrastructure Improvements shall be exempt from all taxes imposed by the District that relate to the transfer of real or personal property, including, as any may be amended from time to time, the:

“(1) Transfer tax imposed under D.C. Official Code § 47-903;

“(2) Recordation tax imposed under section 303 of the District of Columbia Deed Recordation Tax Act, approved March 2, 1962 (76 Stat. 12; D.C. Official Code § 42-1103);

“(3) Sales tax imposed under D.C. Official Code § 47-2002; and

“(4) Use tax imposed under D.C. Official Code § 47-2202.”.

(m) Section 312 (D.C. Official Code § 34-1313.12) is amended as follows:

(1) The heading is amended by striking the phrase “Plan.” and inserting the phrase “Plan and financing order.” in its place.

(2) The existing text is designated as subsection (a).

(3) A new subsection (b) is added to read as follows:

“(b) In addition to the requirements of subsection (a) of this section, an application to amend an existing Underground Infrastructure Improvement Projects Plan shall request any amendment to the Commission’s financing order for the corresponding period such that the work, surcharges and riders, and other contents of the financing order, as amended, are coordinated with the Underground Infrastructure Improvement Projects Plan, as amended.”.

(n) Section 313 (D.C. Official Code § 34-1313.13) is amended as follows:

(1) The heading is amended by striking the phrase “Charges.” and inserting the phrase “Charges, financing order.” in its place.

(2) The text is amended as follows:

(A) Strike the phrase “section 308(c).” and insert the phrase “section

308(c) and, with respect to the financing order for the corresponding period, shall include the information required pursuant to section 302.” in its place.

(B) The second sentence is amended to read as follows:

“The application to amend shall apply only to future Underground Project Charges and the future Underground Rider. Any approval of an application to amend shall allow for recovery by the electric company through:

“(1) Underground Project Charges of any prudent and reasonable expenses or costs for any project previously approved by the Commission; and

“(2) The Underground Rider, any amounts paid with respect to DDOT Underground Electric Company Infrastructure Improvement Charges.”.

(o) Section 314 (D.C. Official Code § 34-1313.14) is amended as follows:

(1) The heading is amended by striking the phrase “DDOT Underground Electric Company Infrastructure Improvement Charge” and inserting the phrase “the Underground Rider” in its place.

(2) Subsection (a) is amended to read as follows:

“(a) The electric company shall not file a request for approval of a schedule applying the true-up mechanism to the Underground Rider with the Commission more frequently than twice per year.”.

(3) Subsection (b) is amended as follows:

(A) Paragraph (1) is amended by striking the phrase “DDOT Underground Electric Company Infrastructure Improvement Charges” and inserting the phrase “the Underground Rider” in its place.

(B) Paragraphs (2) and (3) are amended to read as follows:

451           “(2) Billing and collection data that show the proposed adjustment is expected to  
452 generate payments that will permit the electric company to recover an amount equal to the  
453 aggregate amount of the DDOT Underground Electric Company Infrastructure Improvement  
454 Charges adjusted for any over-collection or under-collection through the prior year under the  
455 Underground Rider;

456           “(3) A showing that the proposed adjustment is expected to result in neither a net  
457 over-collection nor under-collection by the electric company of an amount equal to the aggregate  
458 of the DDOT Underground Electric Company Infrastructure Improvement Charges through the  
459 Underground Rider; and”.

460           (C) Paragraph (4) is amended by striking the phrase “and disbursements  
461 of” and inserting the phrase “of the Underground Rider and payment of” in its place.

462           (4) Subsection (c) is amended by striking the phrase “DDOT Underground  
463 Electric Company Infrastructure Improvement Charges” and inserting the phrase “Underground  
464 Rider” in its place.

465           (5) Subsection (d) is amended by striking the phrase “DDOT Underground  
466 Electric Company Infrastructure Improvement Charges” both times it appears and inserting the  
467 phrase “Underground Rider” in its place.

468           (6) Subsection (e) is amended to read as follows.

469           “(e) Notwithstanding any other provision of this act, if the electric company has not  
470 recovered the full amount of the aggregate DDOT Underground Electric Company Infrastructure  
471 Improvement Charges that it has paid, the Underground Rider shall continue to be collected until  
472 the electric company has recovered the full amount even if there is no current biennial  
473 Underground Infrastructure Improvement Projects Plan in effect.”.

474 (7) A new subsection (f) is added to read as follows:

475 “(f)(1) In conducting the true-up, the recovery for the under-collection of the DDOT  
476 Underground Electric Company Infrastructure Improvement Charges through the Underground  
477 Rider shall be allocated to each customer class in the proportion to which the customer class  
478 contributed to the under-collection of the DDOT Underground Electric Company Infrastructure  
479 Improvement Charges.

480 “(2) Nothing in the operation of the true-up shall be deemed to violate the  
481 requirement of this act that the Underground Rider be non-bypassable.”.

482 (p) Section 315 (D.C. Official Code § 34-1313.15) is amended as follows:

483 (1) Subsection (a) is amended by striking the word “triennial” and inserting the  
484 word “biennial” in its place.

485 (2) Subsection (b) is amended by striking the phrase “to its customers”.

486 (3) Subsection (c)(5) is amended by striking the phrase “Commission in the” and  
487 inserting the phrase “Commission for the electric company and in the” in its place.

488 (q) Section 319 (D.C. Official Code § 34-1313.19) is amended as follows:

489 (1) Subsection (a) is amended as follows:

490 (A) Paragraph (1) is amended as follows:

491 (i) The lead-in text is amended by striking the year “2019” and  
492 inserting the year “2022” in its place.

493 (ii) Subparagraph (C) is amended as follows:

494 (I) Strike the phrase “DDOT Underground Electric  
495 Company Infrastructure Improvement Charges” and insert the phrase “Underground Rider” in its  
496 place.

497 (II) Add a comma after the phrase “residential customers”.

498 (III) Strike the phrase “implications of the Underground”  
499 and insert the phrase “implications of the Underground Rider and the Underground” in its place.

500 (iii) A new subparagraph (C-1) is added to read as follows:

501 “(C-1) Evaluates whether the impact of the DDOT Underground Electric  
502 Company Infrastructure Improvement Activity and the Electric Company Infrastructure  
503 Improvement Activity otherwise is in the public interest; and”.

504 (iv) Subparagraph (D) is amended as follows:

505 (I) Sub-subparagraph (i) is repealed.

506 (II) Sub-subparagraph (ii) is amended to read as follows:

507 “(ii) Adjust the limit of the electric company's investment to be  
508 recovered through the Underground Project Charges as set forth in section 310(d);”.

509 (III) A new sub-subparagraph (ii-1) is added to read as  
510 follows:

511 “(ii-1) Adjust the limit of the DDOT Underground Electric  
512 Company Infrastructure Charges as set forth in section 301(a)(2); or”.

513 (B) Paragraph (2) is repealed.

514 (C) Paragraph (3) is amended to read as follows:

515 “(3) The report required by paragraph (1) of this subsection shall include any  
516 separate statements of the Mayor, Commission, OPC, or the electric company that the Mayor,  
517 Commission, OPC, or the electric company requests be included in the report.”.

518 (2) Subsection (b) is amended as follows:

519 (A) Strike the word “reports” and insert the word “report” in its place.

520 (B) Strike the phrase “each report” and insert the phrase “the report” in its  
521 place.

522 Sec. 3. Conforming amendments.

523 (a) Section 302 of the District of Columbia Deed Recordation Tax Act, approved March  
524 2, 1962 (76 Stat. 11; D.C. Official Code § 42-1102), is amended as follows:

525 (1) Paragraph (33) is amended by striking the word “and”.

526 (2) Paragraph (34) is amended by striking the period and inserting the phrase “;  
527 and” in its place.

528 (3) A new paragraph (35) is added to read as follows:

529 “(35) Deeds to property transferred between the electric company and the District  
530 pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of  
531 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).”.

532 (b) Section 47-902 of the District of Columbia Official Code is amended by adding a new  
533 paragraph (27) to read as follows:

534 “(27) The transfer of real and personal property between the electric company and  
535 the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement  
536 Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-  
537 1313.11(c)).”.

538 (c) Section 47-2005 of the District of Columbia Official Code is amended by adding a  
539 new paragraph (40) to read as follows:

540 “(40) Any sales concomitant to the transfer of real and personal property between  
541 the electric company and the District pursuant to section 311(c) of the Electric Company  
542 Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102;

D.C. Official Code § 34-1313.11(c)).”(d) Section 47-2206 is amended as follows:

(1) Paragraph (3) is amended by striking the word “and”.

(2) Paragraph (4) is amended by striking the period and inserting the phrase “; and” in its place.

(3) A new paragraph (5) is added to read as follows:

“(5) Any sales concomitant to the transfer of real and personal property between the electric company and the District pursuant to section 311(c) of the Electric Company Infrastructure Improvement Financing Act of 2014, effective May 3, 2014 (D.C. Law 20-102; D.C. Official Code § 34-1313.11(c)).”.

#### Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement of the Chief Financial Officer for the Electric Company Infrastructure Improvement Financing Amendment Act of 2017, passed on 2nd reading on May 2, 2017 (Enrolled version of Bill 22-184), as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

#### Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), and shall remain in effect for no longer than 90 days, as provided for emergency acts of the Council of the District of Columbia in section 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)).





**OFFICE OF THE GENERAL COUNSEL**

Council of the District of Columbia  
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Washington, DC 20004  
(202) 724-8026

**MEMORANDUM**

**TO:** Councilmember Kenyan McDuffie

**FROM:** Ellen A. Efros, General Counsel *EAE*

**DATE:** May 2, 2017

**RE:** Legal sufficiency determination for the Electric  
Company Infrastructure Improvement Financing  
Emergency Amendment Act of 2017

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The measure is legally and technically sufficient for Council consideration.

The emergency legislation mirrors Bill 22-184, the Electric Company Infrastructure Improvement Financing Amendment Act of 2017,<sup>1</sup> which this office previously reviewed for legal and technical sufficiency, with the amendments to be moved to Bill 22-184 incorporated.<sup>2</sup>

I am available if you have any questions.

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<sup>1</sup> Passed on 1st reading on April 4, 2017; scheduled for 2nd reading on May 2, 2017.

<sup>2</sup> The amendment (1) aligns the notice provisions with the now single application process for a financing order and biennial plan and provides a minimum of 60 days for public comment and 14 days to file a motion to intervene, (2) expands the outage data to be considered when determining which power lines to underground to the year 2010, and (3) strikes the applicability provision as funds in the fiscal year 2017 through 2020 budget and financial plan are available and sufficient to implement the legislation.

**COUNCIL OF THE DISTRICT OF COLUMBIA**  
**Office of the Budget Director**



Jennifer Budoff  
Budget Director

**FISCAL IMPACT STATEMENT**

**TO: The Honorable Phil Mendelson, Chairman, Council of the District of Columbia**

**FROM: Jennifer Budoff, Budget Director**



Certified by Jennifer Budoff  
Budget Director  
Council of the District of Columbia

**DATE: May 01, 2017**

**SHORT TITLE: The Electric Company Infrastructure Improvement Financing Emergency Amendment Act of 2017**

**TYPE: Emergency**

**REQUESTING OFFICE: Councilmember Kenyan McDuffie**

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**Conclusion**

This legislation will not have an adverse impact on the District's current budget and financial plan because there is no cost to the District associated with implementing this legislation.

**Background**

The emergency legislation is similar to the underlying bill except for the addition of a conforming amendments section that exempts the transfer of real and personal property between the electric company and the District from transfer, recordation, sales, and use taxes. As noted in the Chief Financial Officer's fiscal impact statement dated March 6, 2017, exempting the transfer of the improvements to PEPCO from transfer, recordation, sales, and use taxes does not have a fiscal impact. This is because this is a unique and large project that is not currently part of any ongoing or anticipated tax revenues.

**Analysis of Impact on Revenue**

This legislation will not adversely impact revenue.

**Analysis of Impact on Spending**

This legislation will not adversely impact spending.