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Mr. Andrew S. Johnston
Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
6 St. Paul Street, 16th Floor
Baltimore, MD 21202-6806

Re: Case Nos. 9618 and 9645

Dear Mr. Johnston:

Attached is Potomac Electric Power Company and Delmarva Power & Light Company's Initial Comments regarding their multi-year plans.

Please contact me if you have any further questions.

Sincerely,

/s/ *Kimberly A. Curry*
Kimberly A. Curry

Enclosure

cc: All Parties of Record

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company	))))	Case No. 9618
Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan	))	Case No. 9645

Initial Comments of Potomac Electric Power Company
and Delmarva Power & Light Company

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I. Introduction

Potomac Electric Power Company ("Pepco") and Delmarva Power & Light Company ("Delmarva Power")(collectively "Companies")[1] hereby submit comments that demonstrate that their multi-year plans ("MYPs") provide the benefits articulated by the Commission in Order Nos. 89226 and 89482.[2] Specifically, the forward-looking nature of these MYPs 1) allowed the Companies to make investments in their distribution systems to support increased electrification anticipated by state and county legislation, which benefits customers through a more reliable and resilient grid; 2) afforded the Companies the ability to offer predictable rates to residential and commercial customers because the Companies reflect in their tariffs the rates for each year of the MYP, enabling customers to plan their household and business operation costs; 3) unlike traditional ratemaking, where there is no insight into a utility's spending plans, the MYPs permitted parties to review the Companies investments before they are made, which provided parties with another opportunity to scrutinize the Companies' spending in addition to the annual reviews of investments made, and provided the opportunity to conduct discovery – an opportunity that parties leveraged; and 4) reduced the number of rate cases that the Companies filed, reducing the costs of litigation, an outcome demonstrably proven by, for example, the fact that Pepco filed rate cases every 12-18 months prior to its first MYP in 2020.[3] In fact, in the absence of the forecasted

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[1] Case No. 9655, Pepco's first MYP, Case No. 9702, Pepco's second MYP, and Case No. 9681, Delmarva Power's MYP.

[2] Case No. 9618, Order No. 89226 (August 9, 2019); Case No. 9618, Order No. 89482 (February 4, 2020).

[3] Case No. 9702, Rebuttal Testimony of Company Witness O'Donnell at 17:3-4 and n. 19. Pepco filed seven and Delmarva Power filed six rate cases:

> Pepco: Pepco: Case No. 9602 (2019), Case No. 9472 (2018), Case No. 9443 (2017), Case No 9418 (2016), Case No 9336 (2014), Case No. 9311(2012), Case No. 9286 (2011), Case No. 9217 (December 30, 2009).
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> Delmarva Power: Delmarva Power: Case No. 9603 (2019), Case No. 9447 (2017), Case No. 9424 (2016), Case No. 9317 (2013), Case No. 9285 (2011), Case No. 9249 (2010).

recovery provided by MYPs, the Companies would have to file more frequent historic test year ("HTY")[4] rate cases in order to keep pace with the additional investments necessitated by state policy goals and to implement forward-looking innovative new projects, which will in turn increase administrative burdens for stakeholders, the Commission, and the utility.

An additional benefit of an MYP is that the Companies can flow to customers accelerated tax credits that can make bills more affordable. Also, the MYP is structured to carefully balance the distribution of risk between utilities and customers while providing the opportunity for the Companies to earn their authorized rate of return. The Commission-approved MYP construct has better positioned the Companies to do so, which leads to a more financially healthy utility to the benefit of customers in the form of improved credit metrics and lower borrowing costs, translating into savings that can be passed to customers.

Building on these benefits experienced by customers, stakeholders, the Commission, and the utility, the Companies recognize there are opportunities to examine improvements to the MYP construct. MYPs should be agile enough to enable components of it to evolve, without ceasing its operation altogether simply because stakeholders raise concerns about a particular aspect. For example, the Companies are amenable to considering changes to the reconciliation, such as a cap on reconciled amounts. In these comments, the Companies show that MYPs have achieved the benefits anticipated by the Commission's prior orders, while supporting flexibility.

[4] The Companies use "standard ratemaking" and "historic test year method" of rate base rate of return regulation to refer to ratemaking used in Maryland prior to MYPs. See: Notice of Technical Conference on Alternative Forms of Rate Regulation, initiating Public Conference 51 at 1 (Feb. 14, 2019) ML#223975.

The Commission should find that MYPs are in the public interest and continue to allow them as a cost recovery option, due to the value they provide customers, stakeholders, the Commission, and the utility.

The Companies file these comments in response to the Commission's August 15, 2024 Notice in Case Nos. 9618 and 9645 ("Notice"). Case No. 9618 is the docketed proceeding to consider alternative forms of ratemaking generally for electric utilities and Case No. 9645 is the docketed proceeding for Baltimore Gas and Electric Company's first MYP. The Companies were intervenors in both of these proceedings. The Companies note that in that Notice, the Commission invited all parties and stakeholders to file comments on "pertinent topics highlighted in the Notice, as well as other topics that may inform and enlighten the Commission concerning the future of [MYPs] in Maryland" and that the Commission "intends to utilize this proceeding as a *complete analysis* of [MYP]-impacts on the companies, all classes of customers, the State's economy, and environment and energy policy goals." [5] The Notice further indicated that other, non-MYP utilities could comment on whether the proposed procedural schedule in the Notice was sufficient to consider the lessons learned from the Pepco and Delmarva Power MYPs in Case Nos. 9655 and 9681. Given that the Commission framed this lessons learned proceeding as a "complete analysis" that concerns "the future of [MYPs] in Maryland," the Companies files these comments here and include references to Case Nos. 9655 and 9681 that are relevant to the topics identified by the Commission in the Notice.

[5] Notice at 4-5 (emphasis added).

II. Pepco and Delmarva Power's Multi-Year Plans Have Delivered Benefits

A. What, if any, appreciable improvements in state policy objectives have been achieved under the MRP compared to traditional ratemaking.

As the Commission recognized in Order No. 89226, the energy industry is rapidly undergoing fundamental changes.[6] This is especially true in Maryland, including Prince George's and Montgomery Counties, which are pursuing numerous policy goals that will require a significant transformation of the electric distribution system. Examples of such initiatives include:

1) The Climate Solutions Now Act ("CSNA"),[7] which was enacted by the Maryland General Assembly in 2022, sets forth ambitious climate goals of 60% reduction of greenhouse gas emissions by 2031 relative to 2006 levels, and attaining a net-zero economy by 2045. In support of this goal, the CSNA stated the intent for Maryland to move toward electrification of the building sector. In a study submitted by the Commission to the General Assembly on December 29, 2023 that assessed the capacity of utility distribution systems to serve customers under a managed transition to a highly electrified building sector, the Commission stated that the aggregate Maryland electric system would seek annual peak load growth of 2.1% through 2031, and recognized that "electrification may be concentrated on the parts of the distribution network with limited headroom for some of the in-scope utilities, and that these distribution assets will need more immediate upgrades than others."[8]

2) Just this year, the Maryland General Assembly passed the Distributed Renewable Integration and Vehicle Electrification ("DRIVE") Act,[9] which will require utilities to allow electric vehicles ("EVs") with bidirectional chargers to connect to the distribution grid, a "first-of-a-kind" treatment of such bidirectional vehicle-to-grid (V2G) technology. The DRIVE Act also enables the creation of distributed energy resource ("DER") virtual power plants that pool the capabilities of home solar generators, batteries, smart thermostats, and other equipment.

3) In an effort to promote the interconnection of renewable resources, the Commission is undertaking efforts to modify the allocation of costs of upgrading the distribution to accommodate interconnection projects whereby such costs would be socialized. For example, in RM 81, the Commission adopted regulations relating to the Maryland Cost

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[6] Order No. 89226 at 2.

[7] Md S.B. 528 (2022).

[8] An Assessment of Electrification Impacts on the Maryland Electric Grid at 2-4 (submitted by the Commission to Senate President Bill Ferguson and House Speaker Adrienne Jones on Dec. 29, 2023), available at Corrected-MDPSC-Electrification-Study-Report-2.pdf (state.md.us).

[9] Md H.B. 1256 (2024).

Allocation Method ("MCAM") that require utilities to "describe all hosting capacity upgrade project rightsizing projects describing their forecasts, inputs, and assumptions in their next rate case to assist stakeholders in a prudency review."[10]

4) Montgomery County has also passed the Comprehensive Building Decarbonization (Bill 13-22) law, which requires the County Executive to issue all-electric building standards by December 31, 2027.

5) Prince George's County's Climate Action Plan recommends reducing all community-wide GHG emissions by 50% by 2030 and achieving carbon neutrality by 2050. Specifically, the plan consists of eight transformational commitments containing 26 recommendations that focus on renewable energy investments, accelerating deployment of EVs and charging infrastructure, and implementing equitable community engagement, education, and outreach, among others.

Pepco and Delmarva Power's advancement of these policy objectives has and will require careful and deliberate investments in the distribution system that must be planned and executed while considering the impact on customers. However, as the Commission recognized in Order No. 89226, the traditional ratemaking method based on a HTY primarily looks backwards, meaning that what utilities have planned for future investments are not typically a part of the rate case review process.[11] Consequently, stakeholders and the Commission only have the opportunity to review a utility's capital spending after it has occurred in a backward-looking manner. In other words, stakeholders have no ability to review a utility's planned capital spending and whether it aligns with or will achieve state policy goals because such capital spending plans are beyond the scope of a HTY base rate case proceeding.

[10] PC 44 Interconnection Workgroup Phase V Supplemental Report at p. 13 (Jan. 5, 2024). A "hosting capacity upgrade plan" means a utility plan to promote clean energy interconnection for a particular area or a proposal to open multiple restricted and closed circuits or areas on an electric system in the aggregate through proactive distribution system investments that includes a cost allocation and recovery proposal, under conditions that are approved by the Commission. *Id.* at 6.

[11] Order No. 89226 at 52-53.

The Commission has recognized how an MYP can result in just and reasonable rates that balance the interest of utilities, customers, and changing State policy goals by requiring significant detail into utility planning that was not historically available to interested parties.[12] Specifically, under the current MYP framework, Pepco and Delmarva Power provided detailed information regarding capital spending when their MYPs were filed, including the justification for distribution programs and detailed project level work plans before costs were incurred. This provided the Commission and stakeholders greater insight and understanding into a utility's capital spending plan and how it aligns with the achievement of state policy goals. The MYP framework also provides the Commission and stakeholders the opportunity to review and propose revisions to a utility's capital spending plan if there is disagreement over whether the proposed spending plan is the best way to achieve state policy goals. This demonstrates how the MYP framework is superior to traditional ratemaking in the achievement of state policy goals.

B. Whether the potential shortened cost recovery period was achieved and its impact on customers and other aspects of the ratemaking process.

Just and reasonable rates entail giving a utility an opportunity of earning its authorized rate of return as long as the utility is performing prudently.[13] One of the main benefits that the Commission recognized when it allowed utilities to file MYPs was that this ratemaking paradigm could provide utilities an improved opportunity to earn its authorized rate of return.[14] This improved opportunity to earn its authorized return was based in part on the premise that MYPs would reduce the regulatory lag associated with traditional HTY ratemaking. The MYP construct, as developed by the Commission, provided Pepco and Delmarva Power the opportunity to recover its investments in the distribution system in a timelier manner because rates were set in a forward-

[12] *Id.* at 52, 54.
[13] PUA Section 4-101
[14] Order No. 89482 at 8.

looking manner. Allowing distribution system investments over, for example, a three-year period has helped Pepco and Delmarva Power reduce regulatory lag that would have been present in traditional HTY ratemaking. As provided in response to Staff DR 1-10 in Case No. 9702, Pepco's earned ROEs from the seven years leading up to the filing of its first MYP averaged 7.89%, while the earned ROEs from the three MYP rate years averaged 8.74%. As provided in response to Staff DR 5-10 in Case No. 9681, Delmarva Power's earned ROEs from 2011 through 2021 averaged 6.59%, while Rate Year 1 of Delmarva Power's first MYP showed an earned ROE of 10.73%. There, Delmarva Power over collected $7.3 million, which the Company is returning to customers over the August 1, 2024, to June 30, 2025, period. Traditional ratemaking, unlike an MYP, does not have an ingrained process allowing for such over-earnings to be returned to customers. However, the use of MYPs has not and does not fully eliminate regulatory lag nor does it provide a guarantee that the utility is going to earn its authorized rate of return.

Providing a utility with a better opportunity to earn its authorized return also has benefits for customers. The Companies opportunity to earn its authorized returns results in better credit metrics for the utility and lower borrowing costs that translate into savings that are passed to customers when setting rates. The financial health of the utility also provides better access to the credit markets in times of need. However, it should be noted that MYP's do not create an environment where shareholder interests are favored to the detriment of customers. In fact, the Regulatory Research Associates, an organization that evaluates states from an investment perspective rated jurisdictions that employ MYPs (California, New York, Massachusetts, Hawai'i, Washington, and the District of Columbia.) as "average" to "below average" regulatory environments, which suggests that while multi-year plans are a constructive ratemaking tool they do not allow investors to make undue profits. Importantly, the Commission's MYP construct does not remove the tools Commission and stakeholders such as the Technical Staff and Office of People's Counsel (OPC) have to challenge the investments made by a utility in the distribution system during an MYP. The MYP construct established by the Commission retains stakeholder ability to challenge any distribution investments made during the MYP period for prudency. Thus, any utility distribution system investment is still subject to the same risks of disallowance under traditional HTY ratemaking, thereby retaining all the customer protections of the traditional HTY ratemaking paradigm. However, the MYP provides the Commission and stakeholders with another tool that is not available with traditional HTY ratemaking. As discussed in more detail below in section E, the MYP allows the Commission and other stakeholders to review utilities' investments before they are made and provides greater insights into the utilities' distribution investment decisions. Compared to traditional HTY ratemaking, the MYP construct provides the Commission and stakeholders much more information about utility operations.

Other aspects of the traditional HTY ratemaking methodology also remain unchanged. For example, the utilities still retain the burden of proof. A distribution system investment that turns out to not be used and useful in the provision of service to customers arguments still can be disallowed in the same way they are disallowed within the traditional ratemaking paradigm. Finally, the utility still must provide detailed information regarding the utility's operation to support the proposed cost recovery.

C. Whether rate predictability was achieved and its impact relative to traditional ratemaking

In Order No. 89482, the Commission not only concluded that rate predictability for customers is a benefit of MYPs, but also that studies have shown this to actually be the case.[15]

[15] See Order No. 89482 at 8, n. 22.

This is because the Companies' customers will know the rates they will pay in each year of the MYP, as these rates are visible and transparent in the Delmarva Power and Pepco tariffs. A corollary benefit is that Delmarva Power and Pepco spread out the rate increases over multiple years, achieving gradualism that mitigates the impact of a sharp increase.

In contrast, under traditional HTY ratemaking, customers will not know the timing nor amount of the utility's next rate increase. This knowledge of when the increase will occur, and the magnitude of the dollar amount, empowers the customer to effectively plan their household budgets. The Public Service Commission of the District of Columbia noted this as a particular benefit to commercial customers when it held that Pepco DC's first MYP "provide[d] stability and predictability for small and large commercial customers because it spreads rates over a number of years thus helping the commercial customers plan their business operation costs." Traditional rate cases do not provide rate certainty for customers where electrification, continued focus on reliability, and integration of distributed energy resources may require that the utility file more frequent rate cases to meet state goals.

MYPs also allow a utility to more easily flow credits to customers, not only making rates more affordable, but also contributing to rate predictability because these credits are transparent and known in advance. An example of this is the acceleration of the return of certain tax benefits to customers to mitigate the impact of rate increases and to smooth the revenue requirements over subsequent years, which achieves the gradual transition of rate adjustments that support affordability. Pepco proposed this acceleration in its MYPs in Case Nos. 9655 and 9702.[16] The Commission approved the acceleration for only Rate Year 1 of Case No. 9655 due to the economic

[16] Delmarva Power proposed offsets in its MYP in Case No. 9681. The Delmarva Power MYP resulted in a settlement of the revenue requirement.

effects of the pandemic and declined to approve the tax offsets in Pepco's second MYP in Case No. 9702 because it deemed those offsets were not needed.

From the utility standpoint, the MYP structure provides a utility with predictable and steady revenue over a three-year period, with preestablished rates for that period, allowing the utility to financially enable an acceleration of tax benefits that the Commission previously determined would take 20 years to return to customers.[17] That level of accelerated tax benefits is not feasible under traditional ratemaking as a mechanism to change rates from year to year is necessary in order to align rates and revenues with the magnitude of tax balances being returned to customers in a given year. [18] Additionally, as discussed further in Section G, an MYP creates a stable revenue stream for diverse suppliers and those suppliers' ability to locate resources to support the utility's future work plans, three years in advance.

The Commission's previous determination that MYPs benefit Maryland customers by providing greater rate predictability has been evidenced in both the Pepco and Delmarva Power MYPs.

D. Whether administrative burdens decreased on the Commission and other stakeholders.

At the outset, MYPs by their very nature, decrease the amount of rate cases that utilities must file. Because they are "multi-year" plans, the Companies inherently do not have to file an application to change rates yearly.

The Maryland General Assembly extended the time to review MYPs, or other alternative forms of regulation, beyond the seven months that the Commission has to review traditional rate

[17] Case No. 9702 Hr'g Tr. at 1245:19 – 1247:4 (Leming-Comm. Barve).
[18] Id. at Hr'g Tr. at 1248:5 – 1249:10 (Leming—Comm. Barve).

applications.[19] Effectively, MYPs are evaluated within ten months, therefore giving stakeholders (and the Companies) ample time to fully prosecute and review the proposed rate change. Though that process is elongated compared to the shorter seven months for a traditional rate application, due to the nature of a multi-year plan, this fulsome ten-month review will only occur once every three years (if the MYP is constructed for three years).

The MYP framework supports flexibility in terms of the structure of a rate filing, particularly as it relates to the length of the MYP. In recognizing that Pepco's second MYP would coincide with other rate applications from other Maryland utilities and thus would increase the burdens on relevant stakeholders, the flexibility of the MYP framework allowed Pepco to propose a three-year, nine-month MYP. Though this proposal was not accepted, this demonstrates that MYPs, due to the multi-year framework, can not only decrease the frequency of rate filings, but also be utilized to alleviate resource burdens for stakeholders. This is consistent with the Brattle findings[20] that the Commission cited within Order 89226, when the Commission noted that some states adopted alternative rate plans *because of* existing staffing concerns.[21] The Brattle Report further indicated that "[f]uture test years mitigate the need for frequent filings as the costs included in the test year are more representative of the utility's operating environment."[22]

The use of annual information and reconciliation filings with the MYP framework has not increased the administrative burden of MYPs. As to the reconciliation filings, the prudence reviews for Rate Years one and two of Case No. 9655 (Pepco's first MYP), were conducted during

[19] MD Annotated Code, Section 4-204(b)(2)(ii).
[20] The Brattle Group's Report Exploring the Use of Alternative Regulatory Mechanism to Establish New Rates, Response to PC51 Request for Comments, Prepared for the Joint Utilities, March 29, 2018 ("The Brattle Report").
[21] Order 89226, at 55: "Multiple commissions cited existing staffing concerns as a motivation to enact an alternative rate plan. When a utility's operating environment is changing rapidly (*e.g.* changes in load, increases in costs, etc.), a historic test year can be out-of-date before the rate case settles, and the utility will have to refile rate cases frequently to update the test year." The Brattle Report at 9.
[22] The Brattle Report at 10.

the ten-month review and subsequent hearings for Case No. 9702 (Pepco's second MYP). A separate proceeding was not needed. Similarly, for the annual information filings, a separate proceeding does not occur. This demonstrates that MYPs can and have decreased administrative burdens on regulators and participating stakeholders.

E. Whether greater transparency into capital spending and improvements in system reliability have been realized compared to standard ratemaking.

In the Pepco and Delmarva Power's first MYPs, Pepco and Delmarva Power demonstrated how the MYP construct provides greater transparency into capital spending and improvements in system reliability compared to standard ratemaking. In Order No. 89226, the Commission noted it had primarily relied upon a cost of service methodology using a HTY and that methodology is known as "traditional ratemaking." Traditional rate base/rate of return regulation based upon an HTY provides very little, if any, transparency into a utility's planned capital spending or system reliability improvements. As recognized by the Commission, under the traditional ratemaking paradigm the Commission reviews costs and investments by primarily looking backwards- using a historical approach- which means what utilities planned for future investments are typically not a major part of the rate case review process.[23]

Under the traditional ratemaking paradigm, there is no prior review of or insights on a utility's capital spending plans. The utility has a strong incentive to manage its spend to its budget due to the prudency review that will occur during the reconciliation phase, which occurs after the utility makes the expenditure. Under traditional ratemaking, stakeholders have no ability to

[23] Order No. 89226 at 52.

comment on utility capital spending because that capital spending is beyond the scope of a HTY base rate case proceeding.

On the other hand, as demonstrated in the Pepco and Delmarva Power MYPs provide the Commission and Stakeholders greater insight, understanding and oversight into utilities' capital investment and spending plan by providing the Commission and stakeholders insight into the Companies' capital and O&M spending plan in advance. For example, Pepco and Delmarva Power provided project authorization decks regarding proposed capital investments, which shows alternatives considered. Stakeholders can ask and did ask data requests (DRs) about these spending plans. The MYP construct, as developed by the Commission, provides information to stakeholders related to utility capital spending before, during, and after capital spending and distribution system investments are made. The MYP construct requires the utility to provide detailed information regarding capital spending at the time the MYP is filed to comply with the MYP minimum filing requirements. This information includes justification for distribution programs and detailed project level work plans before costs are incurred and supports the review of those investments after projects are completed to determine whether the investments were prudent, and the money spent was well. Thus, stakeholders are given "two bites at the apple" to review capital projects and investments.

In its Order authorizing Pepco's first MYP, the Commission removed the projected costs for the White Flint Substation from the authorized revenue requirement.[24] In response to this Order and stakeholder input, when Pepco ultimately did move forward with the White Flint project, in developing its work plans related to upgrades needed at the White Flint Substation, the Company also analyzed whether energy storage, distributed energy resources ("DER"), or other targeted

[24] Order No. 89868 at 94-95.

management tools could help alleviate the capacity issues driving the need for the upgrades in response to the Commission's observations in Order No. 89868. The Company then provided updated information within its filing for Pepco MYP II. Subsequently, within MYP II, Pepco was allowed recovery of the White Flint Substation costs, but Pepco incorporated input from the Commission and stakeholders, and the stakeholders got a second bite at the apple to review those costs after they were spent and compare them to the initial forecasted costs to opine on the ultimate prudency of those costs.

It must be remembered that budgets are just that - projections of amounts the utility will spend based on the best information at the time those budgets are developed. However, exogenous factors may come into play after a budget is developed that are beyond the utility's control, particularly with projects with long lead times. For example, inflation may increase, there may be a pandemic that disrupts supply chains, or there may be a severe storm or other unforeseen incident on a utility's distribution system that cause those budgets to become over spent or underspent. Additionally, there may be deviations from the projected timing of capital expenditures on a project. For example, due to a permitting issue, work from the 4th quarter of a year might be delayed to the 1st quarter of the next year. This would result in a variance in capital spending, but the project could still be completed on time and within budget, which is when it would be closed to plant in service and reflected in the Company's rate base. By way of example, Pepco demonstrated that it is able to efficiently manage its capital spending program. During Pepco's first completed MYP in Case No. 9655, the Company's overall capital spend for all three rate years was within 7% of budget and helped the Company to meet the Commission's rigorous reliability performance standards over this period as well. In addition to this, the Company's overall O&M expenditures were also within 7% of budget for all three rate years. The MYP facilitated the process by which the Company provided detailed data to the parties explaining the variances to budget.

Finally, the MYP construct contemplates those situations where variances will occur and has safeguards in place, such as the reconciliation proceeding, to ensure that rates charged to customers remain just and reasonable. Simply put, the MYP construct provides the Commission and stakeholders all the tools needed to appropriately balance the needs of all stakeholders and does so in a more equitable fashion than traditional HTY ratemaking.

Unlike the traditional HTY ratemaking, stakeholders and the Commission using the MYP construct review proposed capital and system investments and budgets before they are made and can challenge those proposed investments and budgets prior to the actual spend. MYPs provide the type of forward-looking insight and Commission influence into utility capital plans and system investments that is not possible under the traditional HTY ratemaking paradigm. MYPs have provided much greater transparency into utility capital spending and system investments than can be achieved when using the traditional HTY ratemaking paradigm. Moreover, as a result of the Companies' proactive investments, customer satisfaction has been high, as evidenced by the Company's high customer satisfaction survey results.

F. Whether more utility innovation and equitable risk distribution have been achieved relative to traditional ratemaking.

As the Commission recognized in Order No. 89226, the traditional ratemaking method based on a historic test year primarily looks backwards, meaning that what utilities have planned for future investments are not typically a major part of the rate case review process.[25] The Commission further detailed how the traditional ratemaking approach has drawbacks such as a failure to equitably distribute risk, limited capabilities to monitor costs, regulatory lag, and

[25] Order No. 89226 at 52-53.

potential restrictions on utility innovation.[26] Moreover, traditional ratemaking has also led to utilities favoring "iron in the ground" investments and restricting innovation.[27] In contrast, the Commission described how an MYP can ensure just and reasonable rates that balance the interest of utilities, ratepayers and changing State policy goals by requiring significant detail into utility planning that is not available to interested parties today.[28] The Commission specifically stated that "[c]ombined with an annual true-up to actual expenses, an MYP provides added transparency with minimal risk to utility customers."[29]

In Order No. 89482, which established the MYP framework, the Commission struck the appropriate balance in addressing the concerns about being able to monitor cost, regulatory lag, and incentivizing utility innovation while equitably distributing risk. The Commission accomplished this by adopting a reconciliation process for MYPs through three distinct proceedings: (1) an annual information filing, (2) a consolidated reconciliation and prudency review in a subsequent rate case, and (3) a final reconciliation and prudency review after the conclusion of the MYP rate-effective period.[30] The Commission determined that this framework would achieve increased transparency and accountability from the utility while addressing the other concerns with traditional ratemaking.[31] Moreover, to ensure that utilities retained the risks of improper forecasts and to encourage cost control, the Commission adopted an asymmetrical method for returning over- and under-collections of prudent expenditures.[32] In cases of overcollections by the utility, carrying costs would be applied to the amount the utility refunded to

[26] *Id.* at 52.
[27] *Id.*
[28] *Id.* at 52, 54.
[29] *Id.* at 54.
[30] Order No. 89482 at 37. In adopting this three-step framework, the Commission rejected a proposal from Staff for annual reconciliations because it "[struck] the wrong balance by placing all of the risk on customers, and none on the utility." *Id.* at 36.
[31] *Id.* at 36.
[32] *Id.* at 39.

customers.[33] However, in the event the utility under-collected revenues, no carrying costs would be applied to the amount the utility collects from customers.[34]

The Commission correctly determined that this method equitably balanced risks between the utilities and customers, since it puts the risk of inaccurate forecasts on utilities and provided a strong incentive for utilities to develop accurate forecasts and plan appropriately to stay within the authorized revenue requirement.[35]

An example of how the MYP construct equitably distributes risk is provided in Pepco's MYP Rate Year ("RY") 3 reconciliation filing submitted on July 29, 2024 in Case Nos. 9655 and 9702.[36] This filing details how Pepco under-recovered its approved RY3 Pepco Maryland distribution revenue requirement by approximately $31.0 million, or approximately 12.9% of its required RY3 operating income. Additionally, based upon actual results for Rate Years 1 through 3, Pepco under-recovered its cumulative MYP revenue requirement by approximately $39.3 million, or 5.8% of its required cumulative operating income. Pepco's filing disclosed that the size of the under-recovery in RY3 was largely driven by higher than projected rate base and higher than projected operating expenses. However, under the Commission's MYP construct, while Pepco will not collect carrying costs for these under-collections thereby holding customers harmless, Pepco will still be able to collect the revenues ultimately deemed just and reasonable by the Commission.

In addition, the MRP construct encourages utilities to put forth innovative proposals. The Commission noted in Order No. 89226 that it has encouraged utilities to innovate,[37] and the

[33] *Id.* at 40.
[34] *Id.*
[35] Id. at 21-22.
[36] ML# 311238.
[37] Order No. 89226 at 8.

forward-looking nature of the MRP construct does just that by allowing utilities to propose innovative programs over a three-year period that can then be reviewed by the parties and the Commission prior to implementation. Moreover, the administrative efficiency of MYPs allow utilities to implement their innovative proposals on an accelerated pace in a single proceeding, such as what Pepco proposed for smart inverters in its MYP in Case No. 9702. If the Company is required to file traditional historic test year rate cases as opposed to MRPs, the pace of investments being made would necessarily result in annual rate case filings, and these annual traditional rate case filings would likely not allow utilities to invest at the pace necessary to fully support the State's goals.

G. *Pepco and Delmarva's MYPs have created an investment environment that supports economic development.*

Pepco and Delmarva's multi-year plans create greater stability in investment paths, allowing utilities and contractors to plan work and support economic development in Maryland. Pepco estimated that its MYP proposal in Case No. 9655 would support 1,150 direct jobs per year, nearly 275 indirect jobs per year, and approximately $1 billion in economic activity in Maryland.[38]

Importantly, the ability to plan investments enables utilities to support the development of local and diverse owned business. Several of Pepco's contractors provided comments regarding this during the public hearings. For example, in a public hearing on Pepco's proposed multi-year plan in Case No. 9702, the Greater Rockville Chamber of Commerce stated, "[w]ith a multi-year rate plan the Chamber of Commerce members can better forecast and plan its budget over several years."[39] This fact was similarly reflected in the community testimony for a Pepco DC rate case, where a contractor representative from National Utility Contractors Association testified that "[f]or

[38] McGowan Testimony, Case No. 9655 at 14.
[39] Case No. 9702, March 26, 2024 Evening Public Hearing at 6:19-22

contractors, they need a ramp-up, . . .if it's a multiyear plan, they have time to hire and to get their. . .infrastructure in place so that they can do the job. . .So I would be more for the multiyear plan."[40] Similarly, in that case, a representative from the National Association of Minority Contractors testified that "it's best to have a three-year plan because then you have the opportunity to design and implement the services and support that needs to be given to the community because most of the things are not one-year events."[41] Thus, continuing multi-year plans not only supports Maryland's economic development but also supports the development of local and diverse businesses.

III. The Multi-Year Framework Has Proven Flexible and Can Continue to Evolve in Maryland to Meet Stakeholder Needs

A. Implementation of multi-year plans have yielded lessons learned that can inform the development of regulations.

Through the implementation of multiple MYPs in Maryland, Pepco and Delmarva Power have been able to incorporate lessons learned that have helped further enhance the benefits that this ratemaking construct provides to customers and stakeholders. For instance, in Pepco's most recent MYP, Case No. 9702, the Company made numerous enhancements to its filing to provide more granular and detailed information. This included enhancements to the Company's forecasted billing determinants, rationales for proposed capital projects and programs, a prioritization of the proposed capital projects, insight into the capital forecasting process, and more detailed information regarding the Company's Bill Stabilization Adjustment ("BSA").[42] Importantly, these enhancements were incorporated as a direct result of stakeholder feedback garnered through the implementation of prior MYPs. Additionally, Pepco refined its capital planning process in

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[40] Public Service Commission of the District of Columbia, Formal Case No. 1176, March 27, 2024 Evening Public Hearing Tr. at 35-36.
[41] Id. at 36.
[42] Case No. 9702, Pepco Witness O'Donnell Direct at p. 30, line 16 to p. 32, line 4.

response to prior Commission MYP orders by taking steps such as removing contingency dollars from its capital project budgets, providing parties with the Company's internal "Project Concurrence Committee" presentations for capital projects,[43] and including discussion of major capital projects upfront in direct testimony. Each of these enhancements were made at the direction of the Commission in prior MYP orders, and have improved transparency and collaboration in the MYP process. Moreover, in connection with its Application, the Company filed literally thousands of pages of supporting information and data – the "Minimum Filing Requirements" of "MFRs" – that provided parties and the Commission with a vast amount of information concerning the Company's planned capital investments and rate request.

In addition to Pepco's most recent case, in Case No. 9681 Delmarva Power was able to include these same lessons learned and improvements to transparency and collaboration in the MYP process. In that proceeding, Delmarva Power leveraged feedback gained through meetings with stakeholders to review planned components of the case and incorporate feedback on the areas of the MYP application that should be bolstered. With this feedback, the Company was able to incorporate several enhancements to the MYP to facilitate review and due diligence efforts by providing information earlier in the process and making personnel available to explain and clarify information.[44] As a result of these efforts, Delmarva Power was ultimately able to reach a Unanimous Stipulation and Partial Settlement Agreement with the parties to that case, demonstrating the added efficiencies that can be gained through the MYP process through collaboration and incorporating lessons learned. Additionally, through the settlement process, it was agreed that in future MYP filings, including the annual information filings and reconciliations,

[43] Case No. 9702, Pepco Witness Young Schedule (ACY)-2 (Confidential), Attachments A through CC.
[44] Case No. 9681, Company Witness O'Donnell Direct Testimony, p. 20, line 5-10

a jurisdictional breakdown for spend applicable to Maryland distribution would be provided. This was an important consideration and learning that was gained through the review of a multi-jurisdictional utility that will help inform the development of regulations.[45]

As previously discussed, over the course of reviewing BGE's and Pepco's second MYPs it was noted that significant overlap existed in the procedural schedules of the two cases that posed a burden on parties. While Pepco proposed a three-year and nine-month MYP to help alleviate this burden, which was ultimately not accepted, the Company noted that it did not take lightly the impact to other stakeholders in reviewing these two cases in parallel and proposed a potential solution.

Finally, Case Nos. 9681 and 9702 for Delmarva Power and Pepco, respectively, provided parties with an opportunity to review the application of the BSA mechanism within an MYP construct. This is an example of another important learning that was gained from the implementation of MYPs in the state and provided an opportunity for the Commission to consider this issue and determine that, "the BSA serves important roles in reducing weather related revenue fluctuations, removing disincentives to pursue current state policy goals, reducing volatility in ratemaking, and providing customer protections when utilities over-collect,"[46] and that "the BSA and the MYP Adjustment are separate mechanisms with different goals."[47]

B. Multi-year plan ratemaking frameworks are flexible, sustainable and adaptable.

The multi-year plan ratemaking framework includes a broad umbrella of ratemaking approaches that share a common core of forward-looking rates that are set based on forecasts or

[45] Order No. 90445 at ¶22.
[46] Order No. 90445 at ¶ 72.
[47] Order No. 91181 at p. 189.

projections. As defined by Commission Staff and cited by the Commission in Order 89226, a multi-year plan is "…an alternative form of regulation that sets rates intended to extend beyond the traditional rate effective period, which begins with the issuance of a final Commission Order and ends only when a new rate is set following the processing of a subsequent rate case."[48] This ratemaking construct includes multiple approaches to determine the forward looking rates and complementary mechanisms that are used in tandem to meet stakeholders goals.

Multi-year plans are used by the most climate-forward states, including California,[49] New York,[50] Massachusetts,[51] Hawai'i,[52] Washington,[53] and the District of Columbia.[54] The multi-year plan frameworks adopted across states vary, with the framework structured to meet the state's needs. For example, commissions vary on their use of forecasting individual investments, inflators, and escalation factors to determine revenue requirements with multi-year plans.[55] Similarly, commissions have different mechanisms for over- and under-earning by utilities as well as "off-ramps" to address extraordinary circumstances and permit plan suspension.[56] These different frameworks, all under the multi-year plan umbrella, reflect different regulatory requirements, and situations, which have been recognized by the Office of Peoples' Counsel[57] and Commission Staff.[58]

[48] Staff Initial comments at 14-15 [pulled from Commission Order]
[49] See 325471063.PDF (ca.gov) at 77-79.
[50] See W. Zarakas, S. Sergici, P. Donohoo-Vallett, and N. Irwin, "Exploring the Use of Alternative Regulatory Mechanisms to Establish New Base Rates: Response to PC51 Request for Comments," March 29, 2019.
[51] See for example: D.P.U.-22-22-Final-Order-11.30.22.pdf (caenergy.com)
[52] See W. Zarakas, S. Sergici, P. Donohoo-Vallett, and N. Irwin, "Exploring the Use of Alternative Regulatory Mechanisms to Establish New Base Rates: Response to PC51 Request for Comments," March 29, 2019.
[53] See W. Zarakas, S. Sergici, P. Donohoo-Vallett, and N. Irwin, "Exploring the Use of Alternative Regulatory Mechanisms to Establish New Base Rates: Response to PC51 Request for Comments," March 29, 2019.
[54] See Order No. 20755 download (dcpsc.org)
[55] PC51, EEI Comments at 34 (Mail Log No. 224817)
[56] *Id.* at 34
[57] Cite to Commission Order 89226 at 35
[58] Cite to Commission Order 89226 at 33

The flexibility in frameworks allows the multi-year framework to evolve with changing prioritization and lessons learned in implementation. This need to evolve was noted by the National Regulatory Research Institute (NRRI), previously the research arm of the National Association of Regulatory Utility Commissioners (NARUC):[59]

> *Ratemaking is a process that requires constant evaluation and modification. Imposing a fixed transition period on the adoption of innovative ratemaking principles inhibits the ability to evaluate and adjust rates in a way that enables effective regulation and customer protection. Adoption of any performance has scheme requires a close watch on utility performance and performance criteria.*

The theme of constant evolution is also echoed by the [NY PSC staff]: "it took the [New York] Commission ten years to figure out what information had to be part of those filings before we really got it right."[60] Similarly, the California Public Utilities Commission moved from a three-year to four-year general rate case cycle,[61] the Massachusetts Department of Public Utilities continues to evolve its multi-year performance-based ratemaking approach, including its approach to capital asset cost recovery.[62]

One such desire for evolution that parties raised in Case No. 9702 is a consideration for whether Maryland's MYP structure, which includes a reconciliation, removes the incentive for utilities to control costs between rate cases.[63] While the Companies maintain that the reconciliation mechanism in Maryland has promoted cost control through its asymmetric design, the Companies do acknowledge the concerns raised by other parties and are open to exploring ways to continue to enhance the MYP structure. The Companies are aware that in BGE's most

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[59] K.Pecham, National Regulatory Research Institute, "Comments of Dr. Carl Pechman of the National Regulatory Research Institute Regarding Alternative Forms of Ratemaking and the Implementation Thereof," Submitted to PC 51. April 18, 2019.
[60] Cite to Commission Order 89226 at 47; quoting the transcript at 325.]
[61] See 325471063.PDF (ca.gov) at 77-79.
[62] D.P.U.-22-22-Final-Order-11.30.22.pdf (caenergy.com)
[63] Case No. 9702, OPC Witnesses Alvarez and Stephens Direct Testimony at p. 33, lines 17-18.

recent reconciliation proceeding, parties have recommended that a cap be placed on reconciliations. Pepco and Delmarva Power are open to exploring this recommendation further and believe it could be a reasonable measure to provide additional cost control safeguards. That said, there is also a stay-out feature included in the MYP construct that prevents utilities from petitioning for rate relief during the pendency of an MYP. During that time, there may be unanticipated and material costs that arise which are out of the utilities' control. Such things could include tax reform, cyber attacks, major storms, or new legislative or regulatory mandates. To ensure that there is a means to handle such events, the District of Columbia Public Service Commission has authorized Pepco to establish a deferred accounting mechanism.[64] The Companies believe that consideration of such of mechanism in Maryland would be a balanced means to ensure that concerns regarding cost control are addressed, while also ensuring that extraordinary events can be addressed in a balanced approach. Such a mechanism would ultimately benefit customers through promoting rate stability while also supporting the financial health of the utility, which ultimately benefits customers through the utilities ability to attract capital at reasonable rates and pass that along to customers.

Additionally, over the course of reviewing BGE's and Pepco's second MYPs it was noted that significant overlap existed in the procedural schedules of the two cases that posed a burden on parties. While Pepco proposed a three-year and nine-month MYP to help alleviate this burden, which was ultimately not accepted, the Company noted that it did not take lightly the impact to other stakeholders in reviewing these two cases in parallel and proposed a potential solution. To underscore the importance of this, in the previously mentioned Delmarva Power case that resulted in a successful settlement, it was noted that the Commission indicated a desire for Maryland

[64] District of Columbia Public Service Commission Order No. 20755 at ¶163.

utilities to space out the timing of MYPs. Delmarva Power was able to address this request by waiting nearly a year after the Commission's issuance of the Pepco MYP order before making this filing.[65] In this vein, the Company proposes that the rate expiration that currently exists in the MYP construct, and the requirement to file a subsequent rate case at a certain point in time, should be revisited in order to provide flexibility as to when cases can be brought forward in a manner that seeks to balance the workload of stakeholders to the extent possible.

[65] Case No. 9681, Company Witness O'Donnell Direct Testimony at p. 12, line 17 through p. 13, line 1.

IV. Conclusion

The Commission should continue the implementation of MYPs in Maryland for many reasons. First, customers have received the benefit of rate predictability by knowing the rates the Companies will charge in each year of the MYP, and the opportunity for more affordable rates due to the Companies' ability to more easily flow credits to customers. Second, MYPs benefit stakeholders because the Companies provide more detailed insight into their capital investments, before those investments are made. Third, the Commission and stakeholder benefit from the administrative efficiencies due to reduced burdens and litigation costs associated with fewer HTY rate case filings. Fourth, the MYPs provide a vehicle for utilities to be more responsive to, and better forecast for, state climate goals. Finally, the Companies have benefitted because MYPs provide a better opportunity for them to earn their authorized rate of return than an HTY, which will lead to a more financially healthy utility that can borrow at more favorable rates and pass those savings onto customers. Even though these benefits have been realized, the Company recognizes there is room for a critical analysis of MYPs and remains open to enhancements to the MYP process.

Respectfully submitted,

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September 16, 2024

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September 2024, I caused to be served via electronic mail the foregoing Initial Comments of Potomac Electric Power Company and Delmarva Power & Light Company to each counsel of record in Case Nos. 9618 and 9645.

/s/ Kimberly A. Curry
Kimberly A. Curry