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September 16, 2024

Mr. Andrew Johnston
Executive Secretary
Public Service Commission of Maryland
6 St. Paul St., 16th Floor
Baltimore, Maryland 21202-6806

Re: Comments on the Pilot Multi-Year Rate Plan Lessons Learned Proceeding – Case Nos. 9618 and 9645

Dear Mr. Johnston:

Enclosed is the Comments on the Pilot Multi-Year Rate Plan Lessons Learned Proceeding which is being filed on behalf of the Staff of the Public Service Commission in the above referenced proceeding.

Sincerely,

Michael A. Dean
Michael A. Dean
Assistant Staff Counsel

In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company	*	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
	*	Case No. 9618
Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan	*	Case No. 9645
	*	

Comments on the Pilot Multi-Year Rate Plan
Lessons Learned Proceeding

In accordance with the Commission's Notice of August 15, 2024, the Staff of the Public Service Commission provides these Comments on the Pilot Multi-Year Rate Plan ("MRP")[1] Lessons Learned Proceeding instituted by the Commission in Case Nos. 9618 and 9645.

1. Background.

In Order No. 89482 (Feb. 4, 2020), the Commission adopted the framework for a MRP pilot program and later that year the Baltimore Gas and Electric Company ("BGE") in Case No. 9645 became the first Maryland electric company to obtain an approved MRP.[2] Following discussions with the parties to Case No. 9645, Staff filed a Lessons Learned Report[3] which recommended certain changes to the MRP application process, which the Commission addressed in Order No. 90401 (Oct. 28, 2022). An MRP was also approved for the Potomac Electric Power Company ("Pepco") in Case No. 9655[4] and, through a settlement, Delmarva Power & Light

[1] As noted in the Commission Notice, the Commission and parties have used the abbreviations MRP and MYP interchangeably to refer to multi-year rate plans. For consistency, this document will use MRP.
[2] Order No. 89678 (Dec. 16, 2020).
[3] Mail Log No. 241486.
[4] Order No. 89868 (Jun. 8, 2021), *Potomac Electric Power Company's Application for an Electric Multi-Year Plan*.

Company ("DPL") in Case No. 9681.[5] BGE filed for a second MRP in Case No. 9692, which was granted by Order No. 90948 (Jan. 1, 2024 Errata).[6] This Order indicated that the Commission had not completed the lessons-learned process, and indicated that it would conduct a lessons-learned proceeding following the completion of BGE's first MYP later in 2024. On August 15, 2024, the Commission issued its Notice initiating the current MYP Lessons Learned proceeding.

2. Comments on MRPs.

In providing comments, the Commission requested that the parties address six questions listed in its Notice as well as other topics. The Notice also suggested that parties consider issues raised by OPC in Case No. 9692 regarding MRPs and whether they are in the best interest of ratepayers and other stakeholders, and whether they are in the public interest in general, as provided for in § 7-505(c) of the Public Utilities ("PU") Article, *Annotated Code of Maryland*.[7]

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[5] Case No. 90445 (Dec. 14, 2022), *Delmarva Power & Light Company's Application for an Electric Multi-Year Plan*.

[6] *Baltimore Gas and Electric Company's Application for an Electric and Gas Multi-Year Plan*.

[7] (c)(1) Notwithstanding any other provision of law, including subsection (d) of this section, the Commission may regulate the regulated services of an electric company through alternative forms of regulation.

(2) The Commission may adopt an alternative form of regulation under this section if the Commission finds, after notice and hearing, that the alternative form of regulation:

(i) protects consumers;

(ii) ensures the quality, availability, and reliability of regulated electric services; and

(iii) is in the interest of the public, including shareholders of the electric company.

(3) Alternative forms of regulation may include:

(i) price regulation, including price freezes or caps;

(ii) revenue regulation;

(iii) ranges of authorized return;

(iv) rate of return;

(v) categories of services; or

(vi) price-indexing.

PU § 7-505(c).

After reviewing the Commission's discussion and ultimate rejection of OPC's request to terminate the BGE Case No. 9692 MRP in Order No. 90948,[8] Staff determined that the majority of the OPC issues raised in its request to terminate the MRP were within the scope of the six questions listed in the Notice.

These comments, the first of two sets scheduled by the Notice, will generally focus on the views of the Staff economists, accountants, and engineers that must collect the data, perform the analysis, and write the reports under the MRP process.

(a) What, if any, appreciable improvements in State policy objectives have been achieved under the MRP compared to traditional ratemaking.

One of the goals of the MRP process was to aid in achieving State policy objectives, including ambitious goals regarding electrification, renewable energy development, gas pipeline replacement, development of new consumer solutions, grid resiliency, and other State goals.[9] Within the MRP process, programs that promoted a State policy objective could be approved with a Performance Incentive Mechanism ("PIM").[10] However, any utility PIM proposal had to meet four criteria to be approved, including that the PIM: (1) be tethered to a recognized State policy; (2) accelerate the policy goal beyond the utility's current capabilities; (3) show measurable benefits to ratepayers; and (4) contain metrics to track data trends over a specific timeframe.[11] To date, within the MRP pilot, no approved MRP has included an approved PIM. It is unclear whether the criteria to obtain an approved PIM is limiting progress within MRPs towards implementing programs in support of State objectives, when compared with standard ratemaking.

[8] Order No. 90948 (Jan. 1, 2024), Case No. 9692, pp. 5-12.
[9] Order No. 89226 (Aug. 9, 2019), Case No. 9618 and Administrative Docket PC51, pp. 52 -53.
[10] Order No. 89638 (Sep. 29, 2020), Case No. 9618 (approving PIMs within MRPs).
[11] Order No. 89868 (Jun. 28, 2021), Case No. 9655, pp. 251-52; see also Order No. 89638, p.16.

Staff analysts provided the following views on whether the MRP process, as implemented, has led to an appreciable improvement in achieving State policy objectives when compared to the regular ratemaking process.

- It is unclear whether the MRP model has done anything to move State policy goals forward. Certainly, the Commission entertained the notion of providing incentives to advance certain policy objectives (electric vehicles, rooftop solar, etc.) but currently no utility has an MRP that includes the ability to earn incentives for advancing these State interests or policy goals. No current MRP has an approved incentive mechanism (contains extra funding) to advance State interests – making the MRP a financing method for simply recovering costs. Under the traditional rate making format, utilities pay for items up front and seek recovery of costs in rates in a rate case. In the MRP format, the costs are forecasted.
- It is unclear whether the MRP process has been successful in promoting State policy goals forward beyond traditional rate making. Typically, policy objectives are addressed outside of base rate proceedings, such as the installation of electric vehicle chargers. For example, BGE in Case No. 9692 proposed various electrification measures that were meant to achieve specific State policy goals. Staff along with other stakeholders argued that these items should be considered outside of a base rate case, and the Commission agreed that these measures should be considered in a future electrification proceeding. MRPs may not achieve any appreciable progress in State policy objectives, when compared to traditional ratemaking, because these issues are not typically included in base rate proceedings.

Although the MRP process, when approved for a pilot, anticipated MRPs as a method of allowing the use of the rate proceeding to further State policies, in practice it has often been a method of cost recovery, with the consideration of initiatives related to the furtherance of State policies removed from the MRP proceeding and delegated to other proceedings.

(b) Whether the potential shortened cost recovery period was achieved and its impact on customers and other aspects of the ratemaking process such as cost disallowance.

This question requests information regarding whether the cost recovery of additional capital investments was achieved though the MRP process, the impact on customers of the shortened cost recovery period, and other aspects of the ratemaking process, such as whether the shortened cost recovery period affected the process of determining potential cost disallowances. Certainly, the MRP process impacts the customers of the electric company. Unlike the standard rate proceeding, the MRP process in practice has resulted in customers having rate increases over each year of the rate-effective period. As such, the experience of customers may be that the MRP process results in more rate increases than traditional ratemaking procedures. Furthermore, by approving the levels and types of spending during the MRP rate-effective period and approving rates for this revenue requirement, the MRP process may reduce the scope of any future prudency review to the consideration of whether the utility company has diligently and prudently carried out its spending plans.

- The achievement of a shortened cost recovery period is a bit unclear. The MRP format transfers more risk from the utility to customers. The MRP includes projects that the utility advances to meet its objectives on a year-to-year basis. These projects are not pre-approved but form the basis for rates that customers will pay on a year-to-year basis. The utility submits budgets that outline proposed operations and maintenance ("O&M") and capital spending plans for each year. These detailed plans represent the utility's desired or anticipated spending for each year and this spending is then translated into the rates that customers pay for service.
- The utility submits detailed spending plans, with varying levels of support. Staff and intervenors, relying upon an asymmetric distribution of data regarding the plans, to evaluate whether a utility proposal may be adequate. The spending proposed by the utility in terms of projects, as indicated, represents the foundation

of what will be translated into rates. However, the ultimate final projects on the project list that form the basis of spending for the current year can be very different than what was proposed in the initial utility budgets. Sometimes this is due to a change in outlook or perhaps a change in spending before the final list is established. These changes receive limited discussion from the utility. The project list governs the initial spending in rates, but the projects change throughout the year for a variety of reasons. Generally, utilities provide limited support for changes in projects either in the proposed project list or in the type and quantity of projects it seeks to recover. It is up to Staff and the intervenors to query the utility about changes to the plan. It would be advantageous if the utility were required to better support its spending plans, including any modifications to its filed and approved plan. Currently the utility provides a simple description of how the budget spending changed from the initial proposed spending that was built into rates compared to the final spending for a particular period. The utility does not unilaterally provide adequate support as to why its spending decisions are justifiable or reasonable. It is up to Staff and the intervenors to interrogate the spending and decide whether the utility's spending decisions were appropriate. The asymmetry of information influences the ability and timing required to gain a complete understanding of the utility's spending decisions. Currently the model in place is biased to afford the utility the balance of the difference of budget and actual spending during the reconciliation proceedings without any detailed information as to whether the intricate spending decisions were ultimately reasonable and in the best interests of all stakeholders.

(c) Whether rate predictability was achieved and its impact relative to traditional ratemaking.

Under the regulatory scheme of a standard rate proceeding, the distribution rates would be set from the end of one rate case until the next rate case, which could be within the next year. With the MRP process, distribution rates are set by a schedule for the next three years, which may provide some predictability regarding annual costs to the customers of an electric company,

but this predictability is undermined by the reconciliation process, which can significantly alter rates. However, the MRP process has no effect, relative to traditional ratemaking, on the predictability of other potential changes to the total electric bill. These include the predictability of changes in electricity prices as reflected in Standard Offer Service and electricity supplier contracts, transmission costs under the Federal Energy Regulatory Commission ("FERC") tariffs, changes in fuel costs for purchased gas adjustment mechanisms,[12] progressions in the amount of Renewable Energy Credits required under the Renewable Energy Portfolio Standard statute,[13] and changes in assessments and local and State taxes. Each of these elements impacts the experience of customers regarding the predictability of their total utility bill. This is not stating that the changes in these additional electric bill elements are not known or predictable, but is a recognition that the MRP process, which sets and makes distribution rates predictable over the MRP rate-effective period, does not change the predictability of these factors when compared to the standard ratemaking process.

The following statements from Staff analysts discuss the benefit of predictability of distribution rates under the MRP process.

- There is some power in having customers know rates for as long as three prospective periods. But the fact that the rates can change at the end of the year creates a real question as to the stability of rates concept. Perhaps the model should be adjusted such that additional revenue can be obtained up to a certain point.
- While future rates are known up to three years into the future with an MRP, this rate certainty is reduced because of the reconciliation charges that are applied later, effectively making the rate a customer paid a form of a forecast. Staff notes that in some instances the reconciliation charges have been relatively large. While in

[12] *See* PU § 4-402 and Case No. 9500, *In the Matter of the Continuing Investigation of the Commodity and Purchased Gas Adjustment Charges of Baltimore Gas and Electric Company*.
[13] *See* PU § 7-703.

theory rate certainty from three-year MRPs provides customer more information about rates further in the future, distribution revenue decoupling, reconciliation charges and credits, as well as changes in commodity price likely mean that customers do not have sufficient certainty to plan based on MRP distribution rates.

- Relative to a utility that files traditional rate cases frequently, there is more certainty about tariffed distribution rates; however there are many Maryland utilities that file rates on about or less frequently than the three-year cadence of rate cases for companies with MRPs. As noted above, rate certainty is tempered by the reconciliation process, which changes the actual rates paid by customers without the customer having any ability to forecast what the reconciliation impact to rates will be. Staff does not believe that the rate predictability of MRPs is something that a customer could rely on given all the other sources of uncertainty that still impact net volumetric rates for Maryland customers.

(d) Whether administrative burdens actually decreased on the Commission and other stakeholders.

One objective in the MRP pilot was to reduce administrative burdens compared to standard ratemaking procedures through the approval of rates for a three-year rate effective period. While the potential of having fewer rate proceedings with the MRP process may reduce the administrative and time burden upon the Commission and some parties, the same may not be true for Staff and certain other parties, as indicated in the comments below.

- The administrative burdens, compared with standard rate making, have not been eased through the MRP format. In a traditional rate case, with the final order all issues are litigated and done. In a MRP format, there are thornier issues to delve into such as the projects, and whether they are reasonable as proposed. Parties must evaluate the projects on the final project list, then further analysis is performed if the Commission's Order is different than what the utility sought. At the end of the year parties are required to re-evaluate spending from the initial year to ascertain if proposed spending for the second year is still reasonable. This happens every year

for rates that are reflected in the MRP format. Ultimately, at the conclusion of the MRP period, a grand reconciliation is conducted to ascertain if spending was reasonable. This multi-faceted approach requires more tasks for parties to focus on during the MRP, resulting in a greater amount of work.

- As stated in its Case No. 9618 Orders,[14] reduced administrative burden on regulators was a benefit the Commission hoped to achieve by implementing MRPs. That goal has not come to fruition. The MRP has several filings associated with it. The filings are made on a yearly basis during the pendency of the MRP. The filings include the original MRP application by the utility, a yearly project list filing in the fall, annual reconciliation filings (informational filing) in the spring, year one and two reconciliation filing in the beginning of year three of the MRP followed by the final reconciliation filing after the completion of year three of the MRP. Each of these filings take significant time to review and evaluate. In comparison, a standard rate case is based on a "test year." Stakeholders review the information from the test year, send out any necessary informational requests, evaluate the original filing and any additional information provided by the utility, and make their recommendation, after which the hearing takes place and the Commission then makes a ruling.

- The MRP review process gets more complicated and burdensome for Staff when information that Staff requires to conduct its review is not included in the initial electric company filing, including quantitative benefits information associated with proposed projects. Staff uses benefit information to conduct prudence reviews and recommend project approval and cost recovery. Absent a utility voluntarily providing this information, Staff is required to send out several rounds of data requests to obtain this vital information through the discovery process. This increases the administrative burden and shifts the burden of proof to Staff and other parties to defend their recommendations. Typically, there is no follow up unless the Commission directs the utility to provide routine updates on certain aspects of

[14] *See* Order No. 89226 (Aug. 9, 2019), p. 55, and Order No. 89482 (Feb. 4, 2020), p. 23.

the rate case. Overall, an MRP case requires several more review steps by stakeholders when compared with a standard rate case.

- There is more complexity in MRP rate cases because of the billing determinant forecasts and the reconciliation and annual information filings. There is also extra work for cost of service and rate design witnesses because, by their multi-year scope, MRPs make cost of service and rate design analysis more difficult than with a historical test year base rate case.

Staff's concludes that its administrative burden has increased with the MRP process. Staff recognizes that there are several factors that may affect this, including the schedule of filings under an MRP, the number of companies with approved MRPs, and the available workforce.

(e) Whether greater transparency into capital spending and improvements in system reliability has been realized compared to standard ratemaking.

One of the stated benefits of the MRP process has been greater transparency in the selection, budgeting, and approval of capital projects intended to improve electric distribution system reliability. However, it is not clear whether the MRP process has resulted in greater improvements in electric distribution system reliability over that which would have been achieved had standard ratemaking processes been used.

- It is clear that the MRP format provides a greater look into the utilities' spending on both O&M and capital. However, the requested transparency does not adequately shield non-utility parties from having to shoulder prudency risk, etc. The long-sought arrangement where budgets and rates would reflect spending, at least on capital projects, based on each utility's distribution service planning case has not evolved to the point where forecasted planning decisions reflect the costs incorporated into future rates.

- The advantage of a MRP case versus a traditional rate-making case is that the MRP case requires the utility to file yearly proposed Capital and O&M project lists prior to the implementation of those projects by the utility. This filing provides Staff and other stakeholders with an insight to utility planning processes and the opportunity to evaluate the utility's proposed programs and project's purpose, timing and estimated costs. With traditional rate making, which is based on a historic test year, all the cost data associated with Capital and O&M projects presented by the utility has been previously completed which allows stakeholders to evaluate the Capital and O&M costs for prudency and not necessarily the forecasted purpose and the timing. In general, MRPs provide greater transparency into utility spending plans versus traditional rate cases. The full transparency benefits of MRPs could further be enhanced if utilities were required to demonstrate expected quantitative benefits associated with proposed projects and investments.

- Regarding whether improvements in system reliability have been realized through MRPs compared to standard ratemaking, it is not yet clear whether any improvements in system reliability can be attributed to the MRP process. Of the three Electric Utilities that have filed MRPs with the Commission, Staff's analysis in Case No. 9353[15] shows that Delmarva and Pepco's System Average Interruption Frequency Index ("SAIFI") and System Average Interruption Duration Index ("SAIDI") performance have consistently improved since the promulgation of RM43[16] in 2012. BGE's SAIFI and SAIDI performance has also generally improved since the promulgation of RM43 but stayed relatively flat from 2020 to

[15] *In the Matter of the Review of Annual Performance Reports on Electric Service Reliability Filed Pursuant to COMAR 20.50.12.11*.

[16] Rulemaking RM43, *Revisions to COMAR 20.50 - Service Supplied by Electric Companies - Proposed Reliability and Service Quality Standards*, adopted the regulations that established the electric distribution system service quality and reliability standards required by PU § 7-213 (enacted in 2011). It included the following definitions for SAIDI and SAIFI at PU § 7-213(a):

> (4) "System-average interruption duration index" or "SAIDI" means the sum of the customer interruption hours divided by the total number of customers served.
>
> (5) "System-average interruption frequency index" or "SAIFI" means the sum of the number of customer interruptions divided by the total number of customers served.

2023. While Staff acknowledges that additional reliability benefits could potentially be realized in the future when projects proposed in the MRPs are implemented, there is no evidence now that indicates that MRPs contributed to improved reliability that could not have been achieved through the traditional ratemaking process. Staff concludes that the promulgation of RM43 is the primary reason for electric distribution system reliability improvement in Maryland.

In summary, Staff concludes that while the MRP process has provided insight into utility capital improvements and electric distribution system plans and made them more transparent, the experience of Staff is that any observed improvements in electric distribution system reliability are likely to have resulted from the RM43 regulations and the Commission's annual review in Case No. 9353, and not from the MRP process. Regarding the BGE gas system, the Commission has previously noted that utility gas system capital work was already essentially transparent due to reviews under the STRIDE statute.[17]

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

Goals in the adoption of the MRP process include the promotion of innovation by electric companies and a more equitable risk distribution between electric companies, regulators, and ratepayers. As discussed below, it is unclear whether the experience provided by the pilot provides a conclusion that these goals have been met within the MRP process when compared with standard ratemaking procedures.

- With regard to utility innovation, while Staff acknowledges that electric companies that filed MRPs with the Commission proposed projects that they believed were innovative and some were approved by the Commission (e.g., the underground system fault detector program proposed by both BGE and Pepco). Staff at this time

[17] *See* Order No. 89226 (Aug. 9, 2009), Case No. 9618 and Administrative Docket PC51, pp. 54-55.

cannot verify whether more utility innovations have been achieved through MRPs relative to traditional ratemaking. Staff concludes that the MRPs provide a great opportunity for utilities to propose and receive approval (cost recovery subject to prudence review) for innovative solutions if utilities are able to document how the proposed innovative solution benefits stakeholders by fully including the anticipated quantitative benefits associated with these investments.

- Relative to this issue, Staff has not observed added benefits from the MRP as the model is currently configured because innovation typically invokes risk. Currently there is not an equitable distribution of risk because the non-utility parties take on the added risk of defending or ostensibly supporting utility spending decisions they do not explicitly oppose, even if the utility itself does not defend its spending decisions. The utilities are almost assured a reconciliation of budget-to-actual spending without fully justifying their spending decisions.

- There is no evidence to show that forecasted distribution rates have tangibly contributed to more utility innovation. Utilities may feel more comfortable proposing innovative ideas in an MRP because, if it is rejected, the utilities would not have already spent the funds such as would occur in a historical test year during a standard base rate case. However, Staff is not aware of any innovative filings other than the climate proposals BGE sought recovery of in its second MRP.

- The distribution of risks has not improved as the risk of prudency under the MRP process has shifted from the utility to ratepayers. This is achieved by the utility putting in significant spend proposals knowing that some may be disallowed, but the utility suffers no negative repercussions because none of the spend has been made. Rather, it is all projections, unlike in historical test year base rate cases where utilities will inherently be more conservative with their spending because, if it is disallowed, the utility would have no way to recover the spend it had already incurred. Given the scale of post MRP reconciliations, and the rate increases in MRPs, it is clear that ratepayers have taken on more risk.

3. Conclusion.

Staff looks forward to reviewing comments from other parties and participating in the MRP Lessons Learned Proceeding. For the reasons stated above, the Commission should, following its review of the above recommendations and those of the other parties during the MRP Lessons Learned Proceeding, consider revising the MRP procedures as required for future rate proceedings.

Michael A. Dean
Michael A. Dean
Assistant Staff Counsel

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above Comments on the Pilot Multi-Year Rate Plan Lessons Learned Proceeding of the Staff of the Public Service Commission of Maryland was provided by e-mail this 16th day of September, 2024, to the Service List of Case No. 9645.

Michael A. Dean
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