BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND

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In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company	*	**CASE NO. 9618**
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Application of Baltimore Gas and Electric Company for an Electric and Gas Multi-Year Plan	*	**CASE NO. 9645**
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	*	**September 16, 2024**
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COMMENTS OF THE MARYLAND ENERGY ADMINISTRATION ON MULTI-YEAR RATE PLANS

The Maryland Energy Administration ("MEA") files these comments in response to the Notice issued by the Maryland Public Service Commission ("Commission") in this above-captioned matter on August 15, 2024.[1] In its Notice, the Commission stated that it "intends to utilize this proceeding as a complete analysis of [multi-year rate plan] impacts on the companies, all classes of customers, the State's economy, and environment and energy policy goals."[2]

As the State's energy office, MEA strives to promote clean, affordable, and reliable energy and energy-related greenhouse gas emission reductions to benefit Marylanders in a just and equitable manner. As MEA stated in Pepco's recent rate case, MEA supports the Commission's efforts to explore whether Maryland should continue with this type of alternative ratemaking at all.[3] While MEA did not explicitly seek disallowance of the entire three-year multi-year rate plan ("MYP" or "MRP") construct in the recent Pepco or BGE multi-year rate cases (Case Nos. 9702, 9645, and 9692), MEA has reviewed the record that has developed in these cases.

[1] Errata Notice, Mail Log No. 311808.
[2] Id. at 5.
[3] Surrebuttal of MEA Director Paul Pinsky, Pepco MYP, Case No. 9702.

SUMMARY OF FINDINGS AND RECOMMENDATIONS

As detailed below, MEA has concluded that MYPs have apparently not met their stated goals of providing rate stability and reducing administrative burdens. They also seem to unfairly shift risk to ratepayers since the annual reconciliation process reportedly lacks the detail required for a thorough prudency review. Should the Commission choose to proceed with MYPs, MEA would recommend ratepayer safeguards such as a percentage cap on allowable variations in expenditures and a requirement for more detailed explanations to support the reconciliation process. Furthermore, though MYPs arguably can help promote State policy goals by providing a three-year forecast into utility planning, a robust distribution system planning process aligned with rate cases could and should provide that same information. MEA recommends that the Commission only approve rate case expenditures that incorporate distribution system planning. MEA also recommends that the Commission revisit how meaningful Performance Incentive Mechanisms ("PIMs") may also help advance State energy policy goals in a way that does not compromise equity or affordability.

MYPs Do Not Achieve Rate Stability

Contrary to expectation, MYPs in Maryland have not achieved rate stability. Instead, there appears to be a continuous increase in budget forecasts between MYPs and actual utility expenditures. For example, Staff asserts that BGE, in its 2020 MYP, forecasted a 2023 budget of $445, increased its 2023 budget forecast to $602 million just two years later in its next MYP, then ultimately reported an actual spend of $645 million during 2023.[4] The Maryland Office of People's Counsel ("OPC") asserts that BGE's average variance in its 2023 reconciliation was 115% for electric capital expenditures, and 177% for operations and maintenance.[5] In reconciling a 27% cost overrun in BGE's systems performance spending in 2022, for example, the Commission noted, as dicta in its most recent MYP order, that it "expects utilities to manage their operations and spending within the limits the Commission has approved"[6] and that it may, in the future, "consider a variance test whereby a specific percentage over-budget or under implementation would be deemed imprudent per se." MEA would recommend at a minimum

[4] Direct Testimony of Staff Witness Samrawit Dererie, Case No. 9645, July 24, 2024, (Dererie Direct) at p. 16:5-12.
[5] Direct Testimony of OPC Witness Colin Fitzhenry, Case Nos. 9645 and 9692 (July 24, 2024) at 3:7-8.
[6] PSC Order No. 90948, Case No. 9692 at p. 181.

that the Commission consider a variance test or other cost containment cap if it chooses to go forward with MYPs.

Multi-Year Plans May Unfairly Shift Risks to Ratepayers

As the Commission noted at the conclusion of BGE's second MYP, OPC "fairly questions whether the utility in an MYP proceeding has an incentive to inflate grid investment proposals"[7] since the forecast and reconciliation process is not as robust as a full prudency review in traditional ratemaking. Under an MYP, utilities can recover overspending through the adjustment rider, which is a lower procedural hurdle than a full-on traditional rate case that would be necessary to address a shortfall in revenue requirements. BGE argues that, under reconciliation, customers will never pay more than actual utility costs if the utility overspends and must make up the losses in a reconciliation. Conversely, BGE argues, "customers are held harmless if a utility underspends, since customers are provided carrying costs at the utility's rate of return."[8] These arguments fail to consider that, thus far, on average the utilities have not underspent. Additionally, cost overruns mean that rates increase unpredictably in the midst of a three-year cycle, defeating the purpose of gradual, knowable rate increases. Finally, the reconciliation process does not seem to have adequate safeguards. Both Staff and OPC have asked for more transparency and analysis in reconciliation filings so the review can provide the basis for a prudency determination, and not merely a bare-bones reconciliation of actual vs. budgeted costs. In its most recent reconciliation filing for BGE for certain gas expenditures, for example, OPC stated that BGE "provided minimal evidence to support the significant alterations to the budgeted amounts approved in the MYP filing" and that "many of the variances were a result of new projects the Company elected to pursue without prior Commission approval, while others were the result of increased levels of investment that were not approved in the Company's MYP filing and have not been adequately justified[.]"[9]

Staff stated that "reviewing utility proposed investments without associated benefits, particularly quantitative benefits, continues to be a challenge."[10] Staff stated that BGE provided "very minimum quantitative benefits information" in its MYP filing, though "companies have

[7] Order 90948, *Application of Baltimore Gas and Electric Company for an Electric and Gas Multiyear Plan*, CN 9692 (December 14, 2023), at 10, citing the Direct Testimony of OPC witnesses Paul Alvarez and Dennis Stephens ("Alvarez-Stephens") in CN9692.
[8] Order 90948, citing BGE Witness Frain.
[9] Direct Testimony of OPC Witness Colin Fitzhenry, Case Nos. 9645 and 9692 (July 24, 2024) at 4:24-30.
[10] Staff Witness Dererie Direct, CN9645, at 17:4-7.

the burden of proof to demonstrate their proposed investments are reasonable and prudent."[11] Staff therefore recommends that future MYP filings include a project list, status of project implementation including actual vs. planned costs as included in the company's initial filing, and expected or realized quantitative benefits from the project."[12]

Should the Commission continue with MYPs, more transparency, justification and explanation of variances should be a baseline requirement.

Multi-Year Plans Have Not Reduced Administrative Burdens

Multi-year cases are supposed to reduce administrative burdens, not increase them. Based on the filings in Maryland's MYPs to date, however, the statutory parties of record (OPC and Staff), as well as intervenors, still must do an enormous amount of legwork to understand – let alone decide to approve or disapprove – the companies' reconciliations. For example, in reconciling BGE's 2021 and 2022 spends for one utility program, a Staff witness changed his filed recommendations for disallowance for one of BGE's projects only after the BGE subsequently explained and clarified its positions in response to multiple data requests.[13] Arguably, the original filings should have had better explanation and justification in the first place, since the utility bears the burden of providing prudency, even in reconciliation filings.

Even Outside of an MYP, State Policy Goals, Rate Cases, and Distribution System Planning Proceedings Should Be Aligned

In its Notice, the Commission asked what, if any, improvements in State policy objectives have been achieved under the MYP compared to traditional ratemaking. MEA appreciates that the MYP construct allowed intervenors and parties a chance to review (and reject) some of BGE and Pepco's proposed electrification plans in their respective rate cases before ratepayer money was spent. However, arguably, other dockets and proceedings also provide windows into how utilities are aligning with State climate goals. For example, the current EmPOWER filings also should provide some of these details now that the plans include the State's greenhouse gas reduction requirements. Additionally, the utility's distribution system plan –in whatever form is ultimately approved by the Commission in PC44– should also be integrated into a rate case, whether traditional or an MYP. Under Illinois law, for example, "the

[11] Dererie Direct at 17:9-12.
[12] Id. at 18:1-3.
[13] Order 90948, Case No. 9692 at 168.

burden proof shall be on the electric utility to establish the prudence of investments and expenditures and to establish that such investments are consistent with and reasonably necessary to meet the requirements of the utility's … approved Multi-Year Integrated Grid Plan[.]”[14] MEA recommends at a minimum that in a Maryland rate case, a utility must demonstrate how its spending aligns with the utility’s filed distribution plan.

MEA also would encourage renewed Commission inquiry into performance-based ratemaking and PIMs, using lessons learned from other states.[15] The Illinois legislature, for example, found that its previously enacted PIMs and performance based formula rates[16] had not been “sufficiently transformative in urgently moving electric utilities toward the State's ambitious energy policy goals” and “may have resulted in excess utility spending and guaranteed profits without meaningful improvements in customer experience, rate affordability, or equity.[17] In 2021, the Illinois legislature, among other things, instructed utilities to present PIMs in eight broad categories, subject to review for efficacy. As a result of this process, in 2024, ComEd (an Exelon company) suggested the following revised PIMs,[18] which provide the example of breadth of PIMs that can be deployed in Maryland:

- Overall Reliability and Resiliency Based on SAIDI
- Economic Justice Communities Reliability and Resiliency (EIEC Performance Metric)
- Peak Load Reduction
- Supplier Diversity
- Residential Disconnection Reduction in 20 Zip Codes
- Interconnection Timeliness
- Customer Service Metric--First Contact Resolution

While the results of this process are still being developed, meaningful performance metrics may help utilities stretch their capabilities to more urgently incorporate the State’s

[14] 220 ILCS 5/16-108.18.
[15] See e.g. MEA Comments, CN9707, Petition of The Office of People’s Counsel for Near-Term, Priority Actions and Comprehensive, Long-Term Planning for Maryland’s Gas Companies, pp. 10-11 (suggesting a PIM for improved hazardous leak detection methods).
[16] Formula rates is a system that allows utilities to earn automatic rate increases based on a predetermined formula over a set time period. See Overview of Formula Rates in Illinois, NARUC, 2017 https://pubs.naruc.org/pub.cfm?id=E3E6B3FC-C487-1876-7749-9BD5AEA07AC7.
[17] 220 ILCS 5/16-108.18.
[18] Commonwealth Edison Company Multi-Year Performance and Tracking Metrics Plan, Illinois Commerce Commission, 22-0067 (revised April 2024).

climate goals.

Conclusion

So far, MYPs have reportedly not delivered their intended benefits. If the Commission continues with them, MEA recommends that the Commission at a minimum consider a cap on variances and require utilities to provide more data and analysis for a prudency review. MEA also recommends that DSP planning be integrated into each rate case and utilities bear the burden of aligning rate case goals with DSP plans. Finally, MEA recommends that the Commission explore how and if PIMs may help reach particular climate and policy goals.