

the further development of cost-effective CHP projects in the Pepco service territory during the remainder of this program cycle.⁴

On June 27, 2016, Montgomery County, Maryland (“Montgomery County” or the “County”) filed a request for rehearing with respect to the Commission’s decision in Order No. 87575, limited to the denial of Pepco’s Tier 2 funding request for its C&I CHP Program.⁵ In support of its petition, the County requested that the Commission consider additional facts that it contends satisfy the standard of review outlined in PUA § 3-114, which permits the Commission to “consider facts not presented in the original hearing, including facts arising after the date of the original hearing.”⁶ The County alleges that these supplemental facts include at a minimum information pertaining to two active Montgomery County CHP projects that were interpreted by Pepco, subsequent to the Commission’s May 26, 2016 Order, to be ineligible for funding based on the Commission’s denial of Pepco’s Tier 2 CHP funding request.⁷

In response to the County’s petition, we issued a request for comments on July 11, 2016, to which we received responses from: the Commission’s Technical Staff (“Staff”),⁸ Unison Energy;⁹ Adventist HealthCare;¹⁰ Doctors Community Hospital;¹¹ Trifecta Energy;¹² Gaylord National Resort and Convention Center;¹³ and Noyes Air Conditioning,

⁴ Order No. 87575 (May 26, 2016) at 26.

⁵ ML#193650: *Case No. 9155 – Application for Rehearing of Montgomery County, Maryland* (“Montgomery County Rehearing Request”) (June 27, 2016).

⁶ PUA § 3-114 (a)(1).

⁷ Montgomery County Rehearing Request at 7.

⁸ ML#195266: *Staff Comments on Montgomery County’s Request for Rehearing with Respect to Commission Order No. 87575* (“Staff Comments”) (July 25, 2016).

⁹ ML#195282: *Unison Energy Letter of Support for Request for Rehearing* (July 22, 2016).

¹⁰ ML#195280: *Adventist HealthCare Letter of Support for Request for Rehearing* (July 22, 2016).

¹¹ ML#195279: *Doctors Community Hospital Letter of Support for Request for Rehearing* (July 22, 2016).

¹² ML#195258: *Trifecta Energy Letter of Support for Request for Rehearing* (July 25, 2016).

¹³ ML#195313: *Gaylord National Resort Letter of Support for Request for Rehearing* (July 25, 2016).

Inc.¹⁴ With the exception of Staff, all other respondents offered support generally for the County's requested rehearing of our decision to deny Pepco's \$6.6 million Tier 2 funding request, with some respondents also including details about their respective CHP projects that were similarly affected by the funding denial. Conversely, Staff noted its support for our decision in Order No. 87575;¹⁵ although, Staff initially advocated for approval of all Pepco Tier 2 funding requests in comments submitted prior to the May, 2016 semi-annual hearings.¹⁶ Staff did, however, in its instant comments propose a potential compromise and general path forward that would facilitate future work group discussions of these issues while amending Order No. 87575 to grant EmPOWER funding for CHP projects that were approved for MEA CHP grants and preapproved through the Pepco CHP Program prior to the issuance of our May 26, 2016 Order.¹⁷

After fully considering Montgomery County's request and the comments filed thereto, we are persuaded to modify in part Order No. 87575 so that \$865,000 of Pepco's Tier 2 CHP Program funding request is now approved. In our initial Order, we noted that the impetus for our denial of the Tier 2 CHP funding request stemmed from our desire to ensure the appropriateness of the requested budget increases in light of projected surcharge impacts.¹⁸ Thus, our scrutiny of Pepco's Tier 2 CHP funding request, in the context of the information available to us at that time, led us to conclude that additional funding opportunities were available to leverage non-ratepayer dollars to incent further CHP project development in the State, thereby negating the need for the \$6.6 million in

¹⁴ ML#195139: *Noyes Air Conditioning, Inc. Letter of Support for Request for Rehearing* (July 20, 2016).

¹⁵ Staff Comments at 3.

¹⁶ ML#188599: *Comments of the Public Service Commission Staff – 2015 Semi-Annual EmPOWER Maryland Programmatic Report for the Third and Fourth Quarters* (April 15, 2016) at 121.

¹⁷ Staff Comments at 2-3.

¹⁸ Order No. 87575 at 26.

incremental CHP Program funding requested by Pepco.¹⁹ Subsequent information provided in the County’s rehearing request and other parties’ comments in support thereof, however, indicates that the primary source of additional funding envisioned in Order No. 87575 – namely MEA CHP grants – was already pursued and secured for some of the CHP projects now seeking complementary EmPOWER incentives. Accordingly, we find it appropriate to amend our prior Order so that additional Pepco CHP Program funding is available in the amount of \$865,000 for the County’s Public Safety Headquarters (“PSHQ”) CHP project. As alleged by the County, the construction of the PSHQ CHP project – a venture projected to achieve 6,588 MWh in annualized energy savings, with an expected in-service date of the first quarter of 2017²⁰ – is alleged to be in jeopardy due to the potential loss of both Pepco EmPOWER CHP incentives and MEA grant funding.^{21,22}

Although the funding earmarked by the limited modification described in this Order is for the County’s PSHQ CHP project,²³ we wish to make clear that it is not the Commission’s role to direct the priority or selection of individual projects within a specific utility’s EmPOWER program. As noted by Staff, CHP project applications continue to be processed by utilities on a first-come, first-serve basis in order to promote equity among

¹⁹ *Id.*

²⁰ Montgomery County Rehearing Request at 8, note 15 (citing Pepco EmPOWER Maryland – Second Semi-Annual EE&C and Demand Response Report (Feb. 1, 2016) at 51).

²¹ Montgomery County Rehearing Request at 9.

²² While Staff notes in its comments that language included on MEA’s CHP grant webpage encourages grant applicants to apply for utility incentives, but does not require receipt of utility incentives, the County provided language from its executed MEA grant agreement that states a recipient’s award can be reexamined by MEA following a project’s rejection or non-participation in the utility’s EmPOWER Maryland CHP Program. *See* Staff Comments at 2; Montgomery County Rehearing Request at 9. Given that no additional comments were filed by MEA, it is at best unclear whether the leveraging of the MEA grant in support of the County’s PSHQ CHP project is at risk absent our modification provided herein to fund the necessary utility incentives for the project.

²³ We note that the County’s request discussed two CHP projects allegedly impacted by our decision to deny Pepco’s Tier 2 CHP funding request; however, the County concedes in its comments that only the construction of the PSHQ CHP project remains in question at this time. Montgomery County Rehearing Request at 7.

the applicants.²⁴ To the extent that the EmPOWER C&I CHP Work Group wishes to convene for purposes of drafting metrics that account for the timeliness, feasibility, and likelihood of completion as part of the utilities' CHP program funding process (as suggested by the County and discussed in Staff's comments), the Work Group is encouraged to do so.²⁵

In the meantime, however, we distinguish our nonstandard project-specific funding delineation contained herein from the additional requests outlined in the Comments on the basis that an application to the Commission for rehearing must be received within 30 days.²⁶ Thus, while we recognize that other CHP projects, including some of those described in parties' filings submitted in response to our July 11, 2016 request for comments, may be similarly situated to the County's PSHQ CHP project (in that they have also already secured non-EmPOWER funds for leveraging purposes), we must affirm our prior decision to deny the balance of the \$6.6 million in Tier 2 CHP Program funding requested previously by Pepco. This denial is without prejudice, however, and potential project applicants, as well as Pepco, MEA, or other interested parties, may choose to submit a revised CHP Program funding request and accompanying information in conjunction with the Fall, 2016 semi-annual hearings.²⁷

IT IS THEREFORE, this 29th day of July, in the year Two Thousand Sixteen, by the Public Service Commission of Maryland,

²⁴ Staff Comments at 2.

²⁵ *Id.*

²⁶ PUA § 3-114(c)(1).

²⁷ We note, however, that Order No. 87575 observed, "although we will always thoroughly review new budget requests in light of the facts presented, we believe that the Utilities' program budgets, as modified today, are sufficient to achieve the program's goals for the remainder of the 2015 – 2017 program cycle." Order No. 87575 at 6.

ORDERED:

(1) That Order No. 87575 is MODIFIED IN PART to approve an incremental \$865,000 in customer incentives for the Montgomery County, Maryland PSHQ project in Pepco's C&I CHP Program through the remainder of the 2015 – 2017 program cycle; and

(2) That all other aspects of Order No. 87575 are hereby AFFIRMED.

/s/ W. Kevin Hughes _____

/s/ Anne E. Hoskins _____

/s/ Jeannette M. Mills _____

Commissioners²⁸

²⁸ Commissioners Harold D. Williams and Michael T. Richard dissent from this decision. See attached statement.

Dissenting Statement of Commissioners Harold D. Williams and Michael T. Richard

We dissent on this order because the Commission again imposes new charges on Maryland electric customers' utility bills, in this case specifically on businesses, non-profits, churches, government, and other non-residential utility customers. The Commission does this despite declaring in its May 2016 EmPOWER order – in which the Commission increased the EmPOWER surcharge by over \$107 million – that current surcharges were “sufficient” to meet the program objectives. Yet, while having already given PEPCO three increases to its original nearly \$200 million 2015-2017 budget (\$24.3 million in May 2015, \$33.9 million in October 2015, and \$62.2 million in May 2016), today's majority authorizes yet another increase. This is because PEPCO, as in the past, has made promises - this time to Maryland businesses and local governments - that exceeded its budget. We believe this represents poor management of its customers' money, which should be unacceptable to this Commission.

The rehearing request involves a Combined Heat and Power (CHP) project; CHP is a mature and proven efficient source of electric and heat energy. CHP has been successfully promoted for years through public-private partnerships. And there continues to be a number of grant and green-financing opportunities that can be tapped to continue to incentivize this proven technology. However, while it would be great if we could afford to fund every good idea presented to us, the direct consequence of Commission subsidization is a more expensive electric bill for Maryland utility customers.

We believe it is time to reexamine the surcharges on Maryland's utility bills. Marylanders have paid enough, and it is our hope that future Public Service Commissions

will truly give meaning and act on the repeated concerns expressed about the increasing Government-imposed costs borne by Maryland utility customers.

/s/ Harold D. Williams _____

/s/ Michael T. Richard _____
Commissioners