

**ORDER NO. 89782**

2021 – 2023 EmPOWER Maryland Program

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9648  
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**Issue Date: March 5, 2021**

**ORDER DENYING REHEARING AND DIRECTING  
THE COMBINED HEAT AND POWER WORK GROUP TO CONVENE**

1. From October 26 through October 29, 2020, the Commission conducted a hearing on the 2021-2023 EmPOWER Maryland Plans filed by the EmPOWER Utilities<sup>1</sup> and the Maryland Department of Housing and Community Development (“DHCD”). The Commission also considered comments filed by Bloom Energy Corporation (“Bloom”) on October 15, 2020.

2. At the hearing and again in its supplemental comments filed on November 10, 2020, Bloom advocated for the inclusion of non-combustion fuel cell projects as an eligible service within the utilities’ Combined Heat and Power (“CHP”) programs. Bloom alleged that the Maryland distributed generation market is distorted in favor of combustion technologies, given that combustion CHP is eligible to compete in EmPOWER programs while non-combustion fuel cells are not eligible. Bloom pointed

<sup>1</sup> The Potomac Edison Company, Baltimore Gas and Electric Company, Delmarva Power & Light Company, Potomac Electric Power Company, Southern Maryland Electric Cooperative, Inc., and Washington Gas Light Company.

to a restriction in the utilities' 2021-2023 EmPOWER Plans that effectively prevents non-combustion fuel cells from participating since qualifying projects must not export electricity to the grid. Bloom explained that fuel cells generate electricity via an electro-chemical process that is less capable of ramping up and down to quickly match variations in a customer load, thereby making it more difficult for fuel cells to avoid unintentionally exporting electricity to the grid.

3. Bloom acknowledged that the CHP Programs were not designed to encourage customers to benefit from off-site electricity sales, and that the EmPOWER program is intended to be an end-use efficiency program, not a support framework for electric generators that supply the grid itself. Still, Bloom claimed that there is a technical rationale for the Commission to treat fuel cells differently when it comes to the applicability of the EmPOWER program prohibition on exporting electricity: when fuel cells do export to the grid, it is due to a requirement of physics (*i.e.*, the need to send electricity somewhere when the customer load falls below baseload) rather than one of economic advantage. Bloom requested that the Commission direct the utilities to clarify their respective 2021-2023 EmPOWER Plans to allow, at a minimum, the incidental export of electricity where it can be shown that a given project “is intended primarily to offset all or part of the customer's own electricity requirements” and is therefore not designed for the purpose of exporting electricity to the grid.

4. On December 18, 2020, the Commission issued Order No. 89679 authorizing the EmPOWER Utilities and DHCD to transition to the next three-year program cycle for EmPOWER Maryland, subject to modifications and directions. The Order also denied Bloom's request to allow for the incidental export of electricity from CHP projects,

finding that incidental, yet expected, exportation would conflict with the intent of EmPOWER.

### **Request for Rehearing**

5. On January 19, 2021, Bloom filed a Request for Rehearing again asking the Commission to modify the Order so as to permit a small and predetermined incidental export of electricity from non-combustion fuel cell distributed generators, where such export is motivated by technical requirements rather than financial advantage. In the alternative, Bloom requests that the Order be modified to refer the issue to a work group for further study, with the work group filing a recommended course of action on or before April 15, 2021. In support, Bloom alleges that the Commission did not fully consider the impact of its decision to deny the incidental export of electricity and restates its reasoning from prior filings and testimony.

### **Comments In Response**

6. On February 9, 2021, the Commission's Technical Staff ("Staff") filed comments in response to Bloom's Request for Rehearing. Staff disagrees with Bloom's assertion that the Commission did not take into account the impact of its decision on fuel cells and requests that, if the Commission directs a work group to convene, that the filing deadline for a work group report be October 15, 2021.

7. On February 10, 2021, Baltimore Gas and Electric Company ("BGE") filed comments in response to Bloom's Request for Rehearing. BGE concurs with the Commission's decision to not allow for the incidental export of electricity. BGE also notes that Bloom's request for a work group report by April 15, 2021 would allow less than two months to convene a work group, study the issue of incidental exports, and

produce a report. As such, BGE agrees with Staff that any filing to be made by a work group the Commission should direct Staff to convene a work group with a filing deadline for the work group report no later than October 15, 2021.

**Commission Determination**

8. The Commission considered ample information that was placed in the record regarding this issue from written filings and testimony from Bloom as well as Staff and several utilities. The Order took into account this record and the impact to fuel cell technology and noted Bloom's position.

9. The Commission affirms its decisions to allow fuel cells to be included on the list of eligible measures for CHP programs, and to not allow for the incidental export of electricity from CHP projects. The Commission reiterates its finding that the potential, if unintentional, financial gain from the export of electricity is not in keeping with the EmPOWER program's key objective of encouraging and promoting the efficient use and conservation of energy by consumers, gas companies, and electric companies.

10. However, the Commission also notes the willingness of Bloom, Staff, BGE, and others to participate in a work group intended to further discuss issues regarding the incidental export of electricity from CHP projects in light of the restriction that the exporting resource should not stand to financially benefit from the unintentional export. The Commission therefore directs the CHP Work Group to convene discussions on this limited issue and to file a report on its findings by October 15, 2021. A concurring statement from Commissioner Richard is attached to this Order.

**IT IS THEREFORE**, this 5<sup>th</sup> day of March, in the year Two Thousand Twenty-One, by the Public Service Commission of Maryland,

**ORDERED:** (1) That Bloom Energy Corporation's Request for Rehearing is denied; and

(2) That the CHP Work Group is directed to convene discussions on the limited issue and to file a report on its findings by October 15, 2021.

*/s/ Jason M. Stanek*  
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*/s/ Michael T. Richard*  
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*/s/ Anthony J. O'Donnell*  
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*/s/ Odogwu Obi Linton*  
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*/s/ Mindy L. Herman*  
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Commissioners

**CONCURRENCE OF COMMISSIONER MICHAEL T. RICHARD**

**WITH THE ORDER DENYING REHEARING AND  
DIRECTING THE COMBINED HEAT AND POWER  
WORK GROUP TO CONVENE**

1. I join my colleagues in affirming the decision to allow fuel cells to be included on the list of eligible measures for EmPOWER Maryland Combined Heat and Power (CHP) programs and to partially adopt Bloom’s “in the alternative” request to send the limited issue of inadvertent export to a work group for further discussion. I would have preferred, however, to either grant Bloom’s request for rehearing and adopt its proposed solution outright, or at least specifically task the work group to consider the proposed solution:

Allowing a small and pre-defined amount of export be permitted where such export is motivated by technical requirement rather than financial advantage and where the compensation provided for such exported electricity is at the avoided cost rate, thereby avoiding the potential for a shift between customers.

Such a directive could have provided busy work group members with guidance to promote consensus around advancing clean and efficient fuel-cell technologies in Maryland in a timelier manner.

2. In 2012, BGE and Maryland PHI utilities proposed a CHP Program for inclusion in the utilities’ commercial and industrial EmPOWER Maryland programs, stating that the “primary objective of the CHP program is...to help meet the aggressive EmPOWER Maryland goals,” and that CHP would use fuel more efficiently.<sup>1</sup> The Maryland Energy Administration (MEA) “strongly” supported the utilities’ CHP request, arguing it would

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<sup>1</sup>Maillog No. 138468.

contribute to Maryland's EmPOWER goals.<sup>2</sup> MEA's program specifically includes fuel cells, and I am pleased we are likewise now including them in the EmPOWER CHP program.

3. I believe the "export" issue has been a distraction in this proceeding, as there are no legal restrictions included in statute prohibiting export and, in fact, the Maryland legislature has specifically designated fuel cell technology as "net-metering" or export eligible. The utilities stated in their 2012 proposal that *their* "program is not designed to encourage customers to benefit from off-site electricity sales," which is the extent to which exporting was ever mentioned. MEA's filing in support of the utilities' CHP proposals was silent on the export issue and the Commission's June 5, 2012 Order No. 84955 accepting the utility program specifically stated "...we are implementing no specific program cap or project cap with regards to the kilowatt size of the CHP programs..." and the Order largely just reminded the companies about budget and incentive parameters. No legal barriers to "export" were created at the program's initiation or since that time.

4. MEA promotes its CHP incentives program to prospective industries as a clean, efficient, affordable, and environmentally sustainable means to achieve their energy and resiliency requirements. With the advent of renewably sourced "green" and carbon sequestered "blue" hydrogen, fuel cells' non-combustion and potentially carbon-free attributes can provide even more compelling reasons for their inclusion in the EmPOWER program, and supportive of EmPOWER's "key" objectives, even with some inadvertent export.

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<sup>2</sup>Maillog No. 139413.

5. So, I support this Order's affirmation of the inclusion of fuel cell technologies in EmPOWER's CHP, and the directive to send the incidental export issue for further consideration in a work group. I hope that the work group will take into consideration that there are no legal hurdles prohibiting the export of electricity from a CHP facility and, in fact, that fuel cells are specifically allowed by law to net-meter and export power. The State's Energy Office considers CHP and fuel cells as supportive of EmPOWER objectives. Bloom has proposed a solution that has worked in other states and is consistent with Maryland laws and policies, and which accommodates fuel cell technical requirements. I hope the work group will work expeditiously to ensure fuel cells can take their place in the 2021-2023 EmPOWER cycle.

*/s/ Michael T. Richard*

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Commissioner