ORDER NO. 90306

2021-2023 EmPOWER Maryland Program	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9648

Issue Date: August 16, 2022

ORDER ON COST RECOVERY FOR THE 2024-2026 EMPOWER MARYLAND PROGRAM CYCLE

1. On May 5, 2022, the Commission held a legislative-style hearing[1] in the above-captioned case to review semi-annual EmPOWER Maryland reports for the third and fourth quarters of 2021. The Commission also reviewed comments filed in response to the semi-annual reports, additional filings pertaining to recommendations for programmatic and reporting improvements to the 2021-2023 EmPOWER Maryland program cycle, and considerations for the Commission regarding the next three-year program cycle set to begin in January 2024.

2. On June 15, 2022, the Commission issued Order No. 90261, which made determinations relating to the current and future EmPOWER program cycles and noted that a separate order would address the cost recovery of the unamortized balance and the use of performance incentive mechanisms.

3. When making the findings herein, the Commission considered the testimony at the May 5 hearing, as well as several filings, including: the Cost Recovery Work Group Report filed by the

[1] The Commission issued a Notice of the hearing date and comment period for this matter on March 4, 2022 (Maillog No. 239436).

Commission's Technical Staff ("Staff"),[2] the Future Programming Work Group Report filed by the Commission's Public Utility Law Judge ("PULJ") Division,[3] comments filed by the Maryland Energy Administration ("MEA"),[4] comments filed by the Joint Utilities[5] on the Future Programming Work Group Report,[6] a filing by Pepco on behalf of the Joint Utilities in response to Commissioner O'Donnell's bench request for options on addressing EmPOWER's unamortized balance,[7] and a filing by the Maryland Office of People's Counsel ("OPC") in response to Pepco's filing.[8]

4. State law currently authorizes two additional three-year program cycles for EmPOWER, ending on December 31, 2029.[9] As discussed below, the Commission finds that the unamortized balance representing unpaid EmPOWER Maryland program costs and interest must be paid in full by the conclusion of the EmPOWER Maryland program in 2029. In order to determine the most appropriate payoff method(s) to accomplish this, the Commission is requesting data and input from the Utilities and other stakeholders in the EmPOWER program. This determination serves the public interest by ensuring that Maryland ratepayers do not continue to pay for significant carrying charges associated with EmPOWER programs once the program ends.

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[2] Maillog No. 240223: Cost Recovery Work Group Report (April 15, 2022).

[3] Maillog No. 240203: Future Programming Work Group Report (April 15, 2022).

[4] Maillog No. 240344: Maryland Energy Administration Comments - EmPOWER Maryland Semi-Annual Reports ("MEA Comments") (April 25, 2022).

[5] The Joint Utilities comprise: The Potomac Edison Company ("Potomac Edison"), Southern Maryland Electric Cooperative, Inc. ("SMECO"), Baltimore Gas and Electric Company ("BGE"), Pepco, Delmarva Power & Light Company ("Delmarva"), and Washington Gas Light Company ("WGL"). Where one or more utilities commented separately, the remainder are referred to as "the Utilities."

[6] Maillog No. 240355: Comments of the Joint EmPOWER Maryland Utilities on the Future Programming Work Group Report ("Joint Utilities Comments") (April 26, 2022).

[7] Maillog No. 240784: Joint Utilities' Response to Commissioner O'Donnell's Bench Request Regarding the Payback of Unamortized Balance ("Joint Utilities' Response to Bench Request") (May 20, 2022).

[8] Maillog No. 240896: OPC Response to EmPOWER Maryland Utilities Filing of May 20, 2020 Regarding the Unamortized Balance (May 31, 2022).

[9] *Annotated Code of Maryland*, Public Utilities Article ("PUA") § 7-211(g)(2)(i) mentions program requirements for "2027 and thereafter." Given that EmPOWER Maryland operates in three-year program cycles, the 2027-2029 program cycle, with an end-date of December 31, 2029, is the latest program cycle currently required by statute.

I. COST RECOVERY

5. As confirmed in the Cost Recovery Work Group Report,[10] stakeholders could not reach a consensus regarding the cost recovery method to be used beginning with the 2024-2026 EmPOWER program cycle or the appropriate means by which to pay off the unamortized balance.[11] Instead, the Commission received multiple future cost recovery and unamortized balance payoff proposals as discussed below.

6. The Future Programming Work Group Report noted that the Joint Utilities (except SMECO) continue to support the status quo of using a Commission-approved five-year amortization cost recovery approach and the Weighted Average Cost of Capital ("WACC") applied to the unamortized balances for the Utilities' EmPOWER investments.[12] In support of its position, the Joint Utilities (except SMECO) explained that the current cost recovery methodology was designed to recover costs over the average term during which customers realize the associated energy and capacity savings benefits from the EmPOWER programs.[13]

7. Several stakeholders expressed concerns with the proposal to maintain the status quo, including OPC, the Maryland Energy Efficiency Advocates ("MEEA"), the Apartment & Office Building Association of Metropolitan Washington ("AOBA"), and Staff, in large part because the existing methodology does not address or pay down the unamortized balance.[14]

8. In response, the Joint Utilities (except SMECO) proposed to address the unamortized balance by netting any overcollection from the prior year's balance against the revenue requirement for the subsequent period to mitigate any increase in the EmPOWER surcharge. The

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[10] Cost Recovery Work Group Report at 1.
[11] Future Programming Work Group at 62.
[12] *Id*.
[13] *Id*.
[14] OPC also opposed the proposal to maintain the status quo based on its belief that the Utilities currently earn significantly more from the EmPOWER program than utilities in other states. *Id*. at 63-64.

Joint Utilities (except SMECO) proposed that, "if the over-collection is large enough to offset the surcharge increase, the remainder of the imbalance would be applied to the unamortized balance in the following year."[15]

9. In response to a request by Commissioner O'Donnell at the May 5 hearing to provide additional options for stabilizing and reducing the unamortized balances accrued, the Joint Utilities proposed expensing EM&V costs and marketing costs beginning in 2024, in addition to the current expensing of behavioral program costs and utility administration costs. The Joint Utilities claimed this would result in an average reduction by 12% of the total electric unamortized balances and 11% of the total natural gas unamortized balances over the course of the 2024-2026 program cycle.[16]

10. SMECO offered a separate cost recovery proposal, which would pay down the unamortized balance over 10 years beginning in 2024, when it will begin to expense all energy efficiency costs.[17] SMECO's approach would raise the EmPOWER surcharge through 2033 when the unamortized balance would be paid off. SMECO estimated it would cost its members approximately $33.77 million more between 2024 and 2035 to pay down its share of the unamortized balance.[18]

11. MEA proposed that EmPOWER program costs be expensed on an annual basis, with any program costs not recovered in the program year being recovered in the surcharge through a true-up process.[19]

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[15] *Id*. at 64.
[16] Joint Utilities' Response to Bench Request at 1-2.
[17] SMECO has already expensed all demand response costs. Future Programming Work Group Report at 65.
[18] *Id*.
[19] MEA's proposal does not specify in which program year all EmPOWER program costs would begin to be expensed. MEA Comments at 6.

12. OPC proposed that, for a period of 10 years beginning with the 2024-2026 program cycle, the EmPOWER program should transition to an expensing form of accounting, stating that it is the most common accounting method for leading energy-efficiency states, and that a surcharge increase of approximately one dollar per month would be reasonable and result in a payoff of the existing unamortized balance.[20]

13. AOBA did not provide a detailed cost recovery proposal but argued that cost recovery determinations should be made on a utility-by-utility basis and should consider differences in program structures, participation, and cost by utility and rate class.[21]

II. PERFORMANCE INCENTIVE MECHANISMS

14. The Future Programming Work Group also did not reach a consensus on the issue of performance incentive mechanisms ("PIMs"); however, several parties expressed support to replace the current model where program administrators earn a return on the unamortized balance with a model that provides performance-based earnings.[22]

15. The Joint Utilities support a shared savings PIM that would reward a utility for achieving performance in excess of goals and reducing the cost of achieving targeted energy savings, as well as carry no penalty for failing to meet the respective goal.[23]

16. Several stakeholders expressed concerns with the Joint Utilities' proposal, stating that it could incentivize inflating budgets, reward the delivery of programs that the utilities are already

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[20] Future Programming Work Group Report at 69; Maillog No. 240354: OPC Comments on the EmPOWER Utilities' and the Department of Housing and Community Development's ("DHCD") Semi-Annual Reports for Q3-Q4 of the 2021 EmPOWER Maryland Program Cycle ("OPC Comments") (April 25, 2022) at 17.
[21] Future Programming Work Group Report at 64.
[22] *Id*.
[23] *Id*. at 65-66.

responsible for providing, and improperly increase the Joint Utilities' earnings while the unamortized balance continues to increase.[24]

17. In response, the Joint Utilities proposed delaying the use of a PIM to the final year of the 2024-2026 program cycle to allow all parties and the Commission additional time to better understand the new goal aspects of EmPOWER and how a PIM would operate.[25]

18. OPC proposed a phased-in PIM using a performance metric based on greenhouse gas reductions.[26]

19. MEA supports a PIM design based on the EmPOWER goals that provide incentives for efficient spending and enable utilities to meet mandated goals cost-effectively.[27]

COMMISSION DECISION

20. At the start of the EmPOWER program, the Commission directed the utilities to self-finance their program costs and recover the costs through a monthly surcharge imposed upon ratepayers.[28] A five-year amortization schedule was developed to reduce the impact of the surcharge to ratepayers.

21. This cost recovery method successfully minimized the impact of EmPOWER's start-up expenses to ratepayers and has allowed for the monthly surcharge to ratepayers to remain relatively steady. However, in exchange for the largely consistent surcharge, uncollected program costs have accumulated. This, when combined with program costs progressively increasing over time, has

[24] *Id*. at 66.
[25] *Id*. at 67.
[26] *Id.* at 69.
[27] MEA Comments at 6.
[28] Case No. 9111, *In the Matter of the Commission's Investigation of Advanced Metering Technical Standards, Demand Side Management Cost Effectiveness Tests, Demand Side Management Competitive Neutrality, and Recovery of Costs of Advanced Meters and Demand Side Management Programs*, Order No. 81637 at 6 (September 8, 2007).

led to a current combined balance for the utilities of over $800 million in unamortized program costs and interest.

22. While the cost recovery structure of EmPOWER has undergone few substantive changes over the course of the program, the Commission has often contemplated how to appropriately address the unamortized balance, frequently soliciting feedback from stakeholders on the matter. Notably, in Order No. 89679, the Commission directed the utilities to expense their behavior program costs and administrative costs beginning with the 2021-2023 program cycle, thereby slowing the accumulation of the unamortized balance.[29]

23. The Commission finds that the continued accumulation of the unamortized balance and interest is not in the public interest. As previously stated, State law currently authorizes the EmPOWER program to run through December 31, 2029. Ratepayers should not pay for EmPOWER program costs when the programs will no longer be available to them.[30] Accordingly, the Commission finds that steps must now be taken to ensure that the unamortized balance is paid in full by the statutory conclusion of the EmPOWER program in 2029. Failure to do so not only allows carrying charges to continue to compound indefinitely, but does nothing to slow the growth of the current unamortized balance as it approaches $1 billion.

24. Multiple parties proposed scenarios that attempt to reduce the unamortized balance, but the Commission finds none of the proposals to have appropriately balanced the near-term bill impacts against the longer-term payoff impacts to ratepayers. While stakeholders did not utilize the same payoff terms and figures, it is undisputed that a full paydown of the balance would save ratepayers

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[29] Order No. 89679 at 16 and 19 (December 18, 2020).

[30] As previously stated, per PUA § 7-211(g)(2)(i), the 2027-2029 program cycle is currently the last cycle required by statute. The Commission recognizes the possibility that the EmPOWER Maryland program may be statutorily re-authorized at some point, thereby continuing to function beyond December 31, 2029, but the uncertainty of whether or not that will occur, combined with the magnitude of the unamortized balance, require action to be taken now to address the payoff.

a significant amount of money in present dollars. For example, the Joint Utilities' analysis during the Future Programming Work Group showed that a full paydown of the balance over 10 years would save ratepayers approximately $300 million in present dollars compared to the status quo.[31]

25. In order to select the most reasonable and appropriate method to pay off the accumulated balance, the Commission will need additional data from the utilities. Historically, the Commission has required all EmPOWER costs to be recovered through the EmPOWER surcharge; however, the Commission is interested in hearing all options that allow for the recovery of the unamortized balance, including changes to the amortization schedule, proposals to expense program costs, surcharge increases, rate base treatment of the unamortized balance, or a combination thereof.[32] As the utilities develop their payoff options, and as the utilities and DHCD plan their future programming, they should be mindful of the impact to ratepayers and the overall program costs.

26. In order to facilitate review and comparison of the plans, the utilities must file two straw proposals: one which retires the unamortized balance solely using the surcharge; and another which retires the unamortized balance through base rates over both a five and ten-year period. The Commission recognizes that the most appropriate payoff method for one utility may not be the most appropriate for another,[33] and therefore allows the utilities to file any additional payoff proposal they choose, as well as their preferred payoff structure.

27. All filed proposals must include a fully paid off unamortized balance[34] by the completion of the 2027-2029 program cycle (*i.e.*, December 31, 2029). The proposals must also include

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[31] Future Programming Work Group Report at 68.

[32] The utilities should not consider these as limitations on what they can propose.

[33] For example, WGL joined the EmPOWER Maryland program later than the electric utilities did and therefore has a lower unamortized balance. The payoff method that works best for WGL may not work as well for an electric utility. Similarly, given that SMECO is owned as a cooperative and its ratepayers are also shareholders, its preferred payoff method might not work as well for an investor-owned utility.

[34] The unamortized balance as of December 31, 2023.

projections of all customer bill impacts and utility return. Concurrent with plan filing, the utilities must provide supporting schedules and complete the template provided in the Attachment to this Order. While the payoff proposals may include the expensing of some or all EmPOWER program costs to begin at any time, the utilities must all be prepared to expense all EmPOWER program costs by January 1, 2030, should the EmPOWER Maryland program be legislatively re-authorized to continue beyond the 2027-2029 program cycle.

28. The utilities are directed to file their respective unamortized balance retirement plan proposals by October 28, 2022. Parties who wish to file comments on the utilities' filings must do so by November 18, 2022.

29. The Commission recognizes that a well-designed PIM based on clearly defined rules and targets could promote innovation, increase spending efficiency, and boost the performance of EmPOWER programs and promote State climate goals. However, the primary focus at this time must be on reducing the unamortized balance and determining a new cost recovery structure. In the near term the Commission will also be implementing a clearly defined goal structure for the next EmPOWER Maryland program cycle, based on any statutory changes during the 2023 legislative session. Implementing a performance-based incentive mechanism in the next EmPOWER program cycle will be an important next step as the EmPOWER programs evolve.

30. Finally, the Commission directs the Marketing Work Group to convene for the purpose of developing recommendations and proposals on the best methods to advise utility customers of an increase in their EmPOWER Maryland surcharge and/or base rates as a result of the unamortized balance payoff. The Marketing Work Group is directed to file a status report on its findings by November 18, 2022.

IT IS THEREFORE, this 16th day of August, in the year Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

(1) Utilities are directed to file their respective unamortized balance retirement plan proposals as discussed in the body of this Order by October 28, 2022;

(2) Comments on the utilities' filings are due by November 18, 2022; and

(3) The Marketing Work Group is directed to file a status report as described herein by November 18, 2022.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar
Commissioners

Attachment

Example

Utility A has $25 million in unamortized EmPOWER costs and an average program cost of $10 million per year. There is additionally $250,000 of costs already expensed each year for the programs. The amortization schedule for the remaining balance by program year is as follows:

	Remaining Unamortized Balance End of 2022	Collected in 2023	Collected in 2024	Collected in 2025	Collected in 2026	Collected in 2027
2018	$1 million	$1 million	N/A	N/A	N/A	N/A
2019	$3 million	$2 million	$1 million	N/A	N/A	N/A
2020	$5 million	$2 million	$2 million	$1 million	N/A	N/A
2021	$7 million	$2 million	$2 million	$2 million	$1 million	N/A
2022	$9 million	$2 million	$2 million	$2 million	$2 million	$1 million
Total	$25 million	$9 million	$7 million	$5 million	$3 million	$1 million

There are three scenarios below with different ways of managing the amortization schedules to pay off the remaining unamortized balance by the end of the 2027-2029 program cycle. The scenarios below assume constant sales, program costs, and perfect collection every year (no over- or under-collections). The scenarios are based on residential programs/sales and are electricity programs.

Please tailor the scenarios below based on your utility's unique surcharge (such as but not limited to the return earned on the unamortized balance remaining, O&M expenses, PJM market revenues, etc.) and the assumptions on program costs, sales, and true-up you find appropriate. Include at least one example for both a residential and non-residential customer for each scenario. Please use therms for gas programs.

Scenario 1

Start expensing in 2023. Let the existing five-year amortization schedule pay off the remaining balance with all remaining unamortized debt paid off by 2028.

Table 1: Amortization Schedule Scenario 1

	Collected in 2023	Collected in 2024	Collected in 2025	Collected in 2026	Collected in 2027	Collected in 2028
2018	$1 million	N/A	N/A	N/A	N/A	N/A
2019	$2 million	$1 million	N/A	N/A	N/A	N/A
2020	$2 million	$2 million	$1 million	N/A	N/A	N/A
2021	$2 million	$2 million	$2 million	$1 million	N/A	N/A
2022	$2 million	$2 million	$2 million	$2 million	$1 million	N/A
2023	N/A	N/A	N/A	N/A	N/A	N/A
2024	N/A	N/A	N/A	N/A	N/A	N/A
2025	N/A	N/A	N/A	N/A	N/A	N/A
2026	N/A	N/A	N/A	N/A	N/A	N/A
2027	N/A	N/A	N/A	N/A	N/A	N/A
2028	N/A	N/A	N/A	N/A	N/A	N/A
Total	$9 million	$7 million	$5 million	$3 million	$1 million	N/A

Table 2: Calculation Scenario 1

	2023	2024	2025	2026	2027	2028
Amortization	(2018-2022)	(2019-2022)	(2020-2022)	(2021-2022)	(2022)	N/A
	$9 million	$7 million	$5 million	$3 million	$1 million	N/A
True-Up	$0	$0	$0	$0	$0	$0
Annual Program Expense	$10.25 million	$10.25 million	$10.25 million	$10.25 million	$10.25 million	$10.25 million
Total	$19.25 million	$17.25 million	$15.25 million	$13.25 million	$11.25 million	$10.25 million
Sales (kWh)	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000
Surcharge ($/kWh)	$0.00226	$0.00203	$0.00179	$0.00156	$0.00132	$0.00121
Bill Impact (1,000 kWh)	$2.26	$2.03	$1.79	$1.56	$1.32	$1.21

Scenario 2

Start expensing in 2026. Amortize costs for 2023, 2024, and 2025 over three years. Let the existing five-year amortization schedule pay off the remaining balance with all remaining unamortized debt paid off by 2028. The amortization schedule for 2023-2025 is as follows:

Table 3: Amortization Schedule Scenario 2

	Collected in 2023	Collected in 2024	Collected in 2025	Collected in 2026	Collected in 2027	Collected in 2028
2018	$1 million	N/A	N/A	N/A	N/A	N/A
2019	$2 million	$1 million	N/A	N/A	N/A	N/A
2020	$2 million	$2 million	$1 million	N/A	N/A	N/A
2021	$2 million	$2 million	$2 million	$1 million	N/A	N/A
2022	$2 million	$2 million	$2 million	$2 million	$1 million	N/A
2023	$2.5 million	$4 million	$2.5 million	N/A	N/A	N/A
2024	N/A	$2.5 million	$4 million	$2.5 million	N/A	N/A
2025	N/A	N/A	$2.5 million	$4 million	$2.5 million	N/A
Total	$11.5 million	$13.5 million	$14 million	$9.5 million	$3.5 million	N/A

Table 4: Calculation Scenario 2

	2023	2024	2025	2026	2027	2028
Amortization	(2018-2023)	(2019-2024)	(2020-2025)	(2021, 2022, 2024, 2025)	(2022,2025)	N/A
	$11.5 million	$13.5 million	$14 million	$9.5 million	$3.5 million	N/A
True-Up	$0	$0	$0	$0	$0	$0
Annual Program Expense	$250,000	$250,000	$250,000	$10.25 million	$10.25 million	$10.25 million
Total	$11.75 million	$13.75 million	$14.25 million	$19.75 million	$13.75 million	$10.25 million
Sales (kWh)	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000
Surcharge ($/kWh)	$0.00138	$0.00162	$0.00168	$0.00232	$0.00162	$0.00121
Bill Impact (1,000 kWh)	$1.38	$1.62	$1.68	$2.32	$1.62	$1.21

Scenario 3

Start expensing in 2028. Amortize costs for 2023, 2024, and 2025 over three years. Amortize the costs for 2026 and 2027 over two years. Let the existing five-year amortization schedule pay off the remaining balance with all remaining unamortized debt paid off by 2029. The amortization schedule for 2023-2027 is as follows:

Table 5: Amortization Schedule Scenario 3

	Collected in 2023	Collected in 2024	Collected in 2025	Collected in 2026	Collected in 2027	Collected in 2028	Collected in 2029
2018	$1 million	N/A	N/A	N/A	N/A	N/A	N/A
2019	$2 million	$1 million	N/A	N/A	N/A	N/A	N/A
2020	$2 million	$2 million	$1 million	N/A	N/A	N/A	N/A
2021	$2 million	$2 million	$2 million	$1 million	N/A	N/A	N/A
2022	$2 million	$2 million	$2 million	$2 million	$1 million	N/A	N/A
2023	$2.5 million	$4 million	$2.5 million	N/A	N/A	N/A	N/A
2024	N/A	$2.5 million	$4 million	$2.5 million	N/A	N/A	N/A
2025	N/A	N/A	$2.5 million	$4 million	$2.5 million	N/A	N/A
2026	N/A	N/A	N/A	$5 million	$5 million	N/A	N/A
2027	N/A	N/A	N/A	N/A	$5 million	$5 million	N/A
Total	$11.5 million	$13.5 million	$14 million	$14.5 million	$13.5 million	$5 million	N/A

Table 6: Calculation Scenario 3

	2023	2024	2025	2026	2027	2028	2029
Amortization	(2018-2023)	(2019-2024)	(2020-2025)	(2021-2022, 2024-2026)	(2022,2025-2027)	(2027)	N/A
	$11.5 million	$13.5 million	$14 million	$9.5 million	$3.5 million	N/A	N/A
True-Up	$0	$0	$0	$0	$0	$0	$0
Annual Program Expense	$250,000	$250,000	$250,000	$250,000	$250,000	$10.25 million	$10.25 million
Total	$11.75 million	$13.75 million	$14.25 million	$14.75 million	$13.75 million	$15.25 million	$10.25 million
Sales (kWh)	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000	8,500,000,000
Surcharge ($/kWh)	$0.00138	$0.00162	$0.00168	$0.00174	$0.00162	$0.00179	$0.00121
Bill Impact (1,000 kWh)	$1.38	$1.62	$1.68	$1.74	$1.62	$1.79	$1.21