ORDER NO. 90433

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

Issue Date: December 2, 2022

ORDER ON SEMI-ANNUAL EMPOWER REPORTS

I. INTRODUCTION

1. On October 25, 2022, the Commission held a legislative-style hearing[1] in the above-captioned case to review, *inter alia*, the semi-annual EmPOWER Maryland reports for the first and second quarters of 2022 as filed by The Potomac Edison Company ("Potomac Edison"),[2] Southern Maryland Electric Cooperative, Inc. ("SMECO"),[3] Baltimore Gas and Electric Company ("BGE"),[4] Potomac Electric Power Company ("Pepco"),[5] Delmarva Power & Light Company ("Delmarva")[6] (collectively, "the Electric

[1] Notice of the hearing date and comment period for this matter was provided on August 16, 2022 (Maillog No. 241932).
[2] Maillog No. 241897: Potomac Edison 2022 First Semi-Annual EmPOWER Maryland Report for the Period of January 1 through June 30, 2022 ("Potomac Edison Report") (August 15, 2022).
[3] Maillog No. 241905: Southern Maryland Electric Cooperative, Inc.'s Q1/Q2 2022 Semi-Annual EmPOWER Maryland Report ("SMECO Report") (August 15, 2022).
[4] Maillog No. 241926: Baltimore Gas and Electric Company 2022 Mid-Year EmPOWER Maryland Report for January 1 through June 30, 2022 ("BGE Report") (August 15, 2022).
[5] Maillog No. 241916: Potomac Electric Power Company's Mid-Year EmPOWER Maryland Report YTD Q2 2022 Energy Efficiency and Conservation (EE&C) and Demand Response (DR) Programs ("Pepco Report") (August 15, 2022).
[6] Maillog No. 241915: Delmarva Power & Light Company's Mid-Year EmPOWER Maryland Report YTD Q2 2022 Energy Efficiency and Conservation (EE&C) and Demand Response (DR) Programs ("Delmarva Report") (August 15, 2022).

Utilities"), Washington Gas Light Company ("WGL")[7] (collectively, with the Electric Utilities, "the Joint Utilities"), and the Maryland Department of Housing and Community Development ("DHCD").[8]

2. The Commission also reviewed filings from Potomac Edison on its request for the addition of a Conservation Voltage Reduction Program,[9] SMECO on its proposed Lighting Transition Plan,[10] the Commission's Technical Staff ("Staff") on behalf of the EmPOWER Reporting and Process Improvement ("ERPI") Work Group,[11] the Midstream Work Group,[12] and the 2021 Impact Evaluation and Cost-Effectiveness Reports for the Electric Utilities,[13] WGL,[14] and DHCD.[15]

3. Finally, the Commission reviewed comments pertaining to the semi-annual reports as filed by Staff,[16] the Maryland Office of People's Counsel ("OPC"),[17] the Maryland Energy Administration ("MEA"),[18] and the Heating and Air Conditioning Contractors of

[7] Maillog No. 241910: Washington Gas Semi-Annual EmPOWER Maryland Report for the Period of January 1 through June 30, 2022 ("WGL Report") (August 15, 2022).

[8] Maillog No. 241906: State of Maryland Department of Housing and Community Development EmPOWER Maryland Limited Income Programs Semi-Annual Report Q1/Q2 2022 ("DHCD Report") (August 15, 2022).

[9] Maillog No. 242637: The Potomac Edison Company Request for Approval of the Addition of a Conservation Voltage Reduction (CVR) Program within its Energy Efficiency and Conservation Plan for the balance of the 2021-2023 EmPOWER Maryland Plan Cycle (October 12, 2022).

[10] Maillog No. 242681: Southern Maryland Electric Cooperative, Inc. - 2021-2023 EmPOWER Maryland Program Proposed Lighting Transition Plan (October 17, 2022).

[11] Maillog No. 242683: EmPOWER Reporting and Process Improvement Work Group Report 2021-2023 EmPOWER Maryland Program. (October 17, 2022).

[12] Maillog No. 242685: 2021-2023 EmPOWER Maryland Program Midstream Work Group Status Report (October 17, 2022).

[13] Maillog No. 242739: Electric Utility 2021 Impact and Cost Effectiveness Verification and Evaluation Reports (October 20, 2022).

[14] Maillog No. 242737: Washington Gas Light Company 2021 Verification and Evaluation and Cost Effectiveness Reports (October 20, 2022).

[15] Maillog No. 242736: Maryland Department of Housing and Community Development 2021 Verification and Evaluation and Cost Effectiveness Reports (October 20, 2022).

[16] Maillog No. 242682: Comments of the Public Service Commission Staff 2022 Semi-Annual EmPOWER Maryland Programmatic Reports for the First and Second Quarters ("Staff Comments") (October 17, 2022).

[17] Maillog No. 242684: OPC Comments on the EmPOWER Utilities' and DHCD's Semi-Annual Reports for Q1-Q2 of the 2022 EmPOWER Maryland Program Cycle ("OPC Comments") (October 17, 2022).

[18] Maillog No. 242673: Maryland Energy Administration Comments - EmPOWER Maryland Semi-Annual Reports ("MEA Comments") (October 17, 2022).

Maryland, Inc. ("HACC") and Association of Air Conditioning Professionals ("AACP") (collectively, "HACC/AACP"),[19] and additional comments filed by OPC on Potomac Edison's request for the addition of a Conservation Voltage Reduction Program,[20] SMECO's proposed Lighting Transition Plan,[21] and HACC/AACP's recommendation to eliminate energy efficient ratio ("EER") criteria for EmPOWER programs.[22]

4. The filings analyzed the performance of the Joint Utilities' and DHCD's portfolios for the first half of the 2022 program year, offered recommendations for programmatic and reporting improvements to the 2021-2023 EmPOWER program cycle, and addressed considerations for the Commission regarding the next three-year EmPOWER Maryland program cycle set to begin in 2024, among other things. The October 25 hearing allowed the parties to provide additional testimony to the Commission. Upon review of the filings, testimony, and requests presented, the Commission makes the determinations set forth below.

II. ISSUES AND COMMISSION DECISIONS

A. DHCD's Budget Transfer Request

5. DHCD has determined that certain outside services and marketing expenses will be less than originally forecast.[23] Specifically, for its total outside services budget of $1,828,251, DHCD projects that at least $624,000 in outside services expenses for the

[19] Maillog No. 242686: Comments of the Heating and Air Conditioning Contractors of Maryland, Inc. and the Association of Air Conditioning Professionals ("HACC/AACP Comments") (October 18, 2022).
[20] Maillog No. 242789: OPC Response to The Potomac Edison Company's Request for Approval of a Conservation Voltage Reduction Program Under its Energy Efficiency and Conservation Plan (October 24, 2022).
[21] Maillog No. 242792: OPC Comments on Southern Maryland Electric Cooperative, Inc.'s Proposed Lighting Transition Plan (October 24, 2022).
[22] Maillog No. 300111: OPC Comments on Heating & Air Conditioning Contractors of Maryland, Inc. and the Association of Air Conditioning Professionals' Recommendation to Eliminate EER Criteria for EmPOWER (November 3, 2022).
[23] DHCD Report at 16.

single and multifamily programs, and $12,000 in marketing expenses for the multifamily program, will not be spent.[24] DHCD is therefore requesting certain adjustments to its budget as shown on pages 16 and 17 of its Report.[25] DHCD's requested adjustments do not change the total budget for any utility and involve only transfers between residential program budgets for the purpose of increasing residential program benefits.[26]

6. DHCD notes that any future adjustments to the outside services budget or MEEHA marketing budget would exceed the 15% budget modification limitation and, in accordance with prior Commission direction, would require Commission approval. In order to efficiently move funds where they will best be used and maximize budget dollars to be applied to customer benefits, DHCD requests that any future adjustments during the 2021-2023 program cycle to move funds from the outside services and marketing budgets to the customer benefits budget require only Staff approval.[27]

7. If Commission approval is received, DHCD will submit revised ES Tables with its next semi-annual report, will continue to report any future budget revisions in each relevant semi-annual report, and will reflect in the final 2023 semi-annual report the actual budgets utilized during the 2021-2023 program cycle.[28]

8. The Commission notes that no parties opposed DHCD's requests, and that the requests involve providing additional direct benefits to limited-income customers in an efficient, accountable manner. The Commission therefore approves DHCD's requests to make the budgetary adjustments shown on pages 16 and 17 of its Report and to require

[24] The $624,000 represents 34% of DHCD's total Outside Services budget and the $12,000 represents 36.6% of MEEHA's Marketing budget. *Id*.
[25] *Id*. at 16-17.
[26] *Id*.
[27] *Id*. at 17.
[28] *Id*. at 18.

only Staff's review and approval for future adjustments from its outside services and marketing budgets to its customer benefits budget during the current program cycle.

B. Delmarva's Budget Transfer Request

9. Based upon market conditions and stronger-than-forecast performance from some of the programs within its Commercial and Industrial ("C&I") portfolio, Delmarva requests the following budget adjustments:

a. CHP Program: Delmarva proposes transferring $3,475,750 out of the CHP Program budget, citing increased gas prices, a lack of natural gas resources, and budget reallocations due to COVID as factors that have led to the inability to secure more CHP opportunities within the Delmarva territory.[29]

b. EE Communities Program: Delmarva proposes transferring $1,223,272 out of the EE Communities Program budget, noting that the EE Communities Program was filed for 2021-2023 to include a smart street lighting offering which would begin claiming savings and using incentives by 2023.[30] Since the smart street lighting offering has not been approved by the Commission, the associated incentives are not needed within the EE Communities program.

c. Small Business Program: Delmarva proposes transferring $2,275,750 into the Small Business Program budget, stating that there has been a decline in project submissions over the past year due to COVID and workforce shortages, and that the additional funds will allow the program to make

[29] Delmarva Report at 66.
[30] *Id*. at 73.

limited-time offers and other program incentives to help increase program participation.[31]

d. Retro-Commissioning Program: Delmarva proposes transferring $850,000 into the Retro-Commissioning Program budget, citing higher than anticipated participation and customer engagement in this program cycle, which has resulted in the program exceeding its customer incentives budget.[32] Additional funds are required in order for the program to continue operations for the remainder of the program cycle without interruption.[33]

e. Custom Program: Delmarva proposes transferring $350,000 into the Custom Program budget, noting that the program has experienced excellent performance and participation during this program cycle and that the additional funds will allow the program to continue to receive new applications, issue pre-approvals, and build a long-term pipeline of viable opportunities.[34]

f. Existing Buildings Program: Delmarva proposes transferring $1,223,272 into the Existing Buildings Program budget, stating that the program has had strong participation this program cycle and has generated a large pipeline of projects, and that additional funds are needed to ensure that the program can continue operations without interruption and allow for pre-approvals.[35]

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[31] *Id*. at 68.
[32] *Id*. at 69.
[33] *Id*.
[34] *Id*. at 71.
[35] *Id*. at 75.

10. The Commission notes that no parties opposed Delmarva's requests, and that the requests do not involve any additional funding being provided to Delmarva, but rather are transfers within Delmarva's existing budgets. The Commission finds that Delmarva's requests are reasonable, represent an efficient use of funds, will provide customers with additional savings, and are likely to allow programs to continue to operate uninterrupted. For these reasons, the Commission approves Delmarva's budget transfer requests as stated above.

C. BGE's Request to Expand its Midstream Program

11. Due to anticipated changes to savings realized from lighting measures, BGE requests approval to expand its Midstream Program to include high-efficiency food service equipment, pumps, fans, refrigeration equipment, and laboratory equipment measures.[36]

12. In Order No. 89679, the Commission approved BGE's Midstream Program, which includes certain incentives for the purchase of LED light bulbs.[37] Screw-in LEDs represent a significant portion of the reported energy savings for this program; however, the federal Energy Independence and Security Act ("EISA") ban on the manufacture of screw-in incandescent bulbs, effective January 1, 2023, will eventually make it no longer possible to claim savings for incentivizing screw-in LED replacements, given that the screw-in LEDs will then be the baseline for potential savings.[38] BGE acknowledges that this will lead to a very significant decline in energy savings for its Midstream Program. To partially compensate for this decline, BGE requests Commission approval to expand its Midstream Program to include the previously identified measures.

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[36] BGE Report at 59.
[37] Maillog No. 233021 (December 18, 2020).
[38] *Id*.

13. Staff supports BGE's request, noting that BGE explained in response to Staff Data Requests that a budget adjustment will not be necessary for the program expansion, and that incentive levels will be based on "the average difference in the customer purchase price between a high-efficiency unit versus a standard efficiency unit."[39]

14. While it remains to be seen whether or not this modification to BGE's Midstream Program will adequately compensate for the savings lost from BGE's lighting program, the Commission appreciates BGE addressing the need to adjust and proposing a modification to its programming that BGE believes will partially compensate for the decline in savings. The Joint Utilities will all need to make adjustments to their program planning in order to address the upcoming federal changes to lighting standards and the resulting negative impact to EmPOWER's current savings. The Commission therefore approves BGE's request to expand its Midstream Program to include high-efficiency food service equipment, pumps, fans, refrigeration equipment, and laboratory equipment measures.

D. Potomac Edison's Request for Approval of a CVR Program

15. Potomac Edison requests that the Commission approve the addition of a Conservation Voltage Reduction ("CVR") Program for the remainder of the 2021-2023 program cycle.[40] Potomac Edison notes that the CVR Program implemented under its 2012-2014 EmPOWER Maryland Plan was successful and cost-effective, and that, other than the specific facilities affected, the proposed CVR Program is identical to its previously approved and implemented CVR Program.[41]

[39] Staff Comments, pages 25-26.
[40] Potomac Edison Report at 1.
[41] *Id*. at Appendix A.

16. Potomac Edison notes that the CVR Program requires no budget under EmPOWER Maryland since it is characterized as an "Other Program," and that it plans to schedule the CVR Program implementation during scheduled operations and maintenance activities at the selected substations to minimize its operations expense.[42]

17. OPC opposes Potomac Edison's request. OPC contends that, while CVR may be a wise investment in a utility's infrastructure, it has been controversial as to whether or not it is appropriate for the EmPOWER Program for several reasons, including that it reduces the obligation for utilities to achieve savings in homes and businesses, and that it is not subject to the same cost-effectiveness evaluation or standards as EmPOWER-funded programs are.[43] OPC also points to Order No. 89679 wherein the Commission directed the Future Programming Work Group to consider whether it is appropriate to include CVR savings in the next EmPOWER program cycle, and claims that the Commission should not expand the CVR Program while this determination is pending.[44]

18. In the alternative, if the Commission approves Potomac Edison's CVR Program, OPC requests that the Commission require a corresponding increase in Potomac Edison's savings goal to account for any additional savings realized from the CVR Program.[45]

19. Potomac Edison's previous CVR program achieved significant energy savings and demand reductions with very limited costs.[46] The same can be said for the CVR programs

[42] *Id*. at 2.
[43] OPC Comments at 1-2.
[44] *Id*. at 2-3.
[45] *Id*. at 1.
[46] *See* The Potomac Edison Company Request for Approval of the Addition of a Conservation Voltage Reduction (CVR) Program within its Energy Efficiency and Conservation Plan for the balance of the 2021-2023 EmPOWER Maryland Plan Cycle at 1.

implemented by other utilities over the course of previous and current EmPOWER cycles.[47] While the question of whether or not CVR Programs should be included in the *next* program cycle is pending, several utilities are running CVR Programs in the *current* program cycle. The Commission therefore will not deny Potomac Edison the opportunity to implement its own CVR program, especially one identical to a previously approved program. For these reasons, the Commission approves Potomac Edison's request to implement a CVR Program for the remainder of the 2021-2023 program cycle.

E. SMECO's Proposed Lighting Transition Plan

20. Because of the previously noted upcoming federal changes to lighting standards, SMECO anticipates concluding its Residential Lighting Program, and completing all rebate processing for the program, by the end of August 2023.[48] As a result, SMECO forecasts that up to 60% of its 2023 budget for the program will remain unspent.[49] In light of this remaining budget, as well as findings from within the Midstream Work Group, SMECO is proposing budget and incentive shifts to some of its programs for the remainder of the 2021-2023 program cycle.[50]

21. SMECO proposes transitioning funds in its incentives, outside services, utility administration, and marketing budgets from the Residential Lighting Program to the Appliance Rebate, New Homes, and Residential HVAC Programs to increase participation in other programs, support portfolio-level goal achievement, and strengthen program

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[47] "CVR savings accounted for approximately 20 percent of the utilities' claimed savings during the last program cycle." OPC Response to The Potomac Edison Company's Request for Approval of a Conservation Voltage Reduction Program Under its Energy Efficiency and Conservation Plan at 2.

[48] Southern Maryland Electric Cooperative, Inc.-2021-2023 EmPOWER Maryland Program Proposed Lighting Transition Plan at 2.

[49] *Id*.

[50] *Id*. at 1.

awareness ahead of the 2024-2026 program cycle.[51] SMECO's proposal also includes increasing the current "up to" amounts for HPWHs within the Appliance Recycling and New Homes Programs as well as certain equipment types within the HVAC Program.[52]

22. Under SMECO's Lighting Transition Plan, $1,100,000, or 19% of the Residential Lighting Program's 2021-2023 program cycle budget, would be transferred as shown below.[53]

Program	Cycle Budget	Adjustment	Revised Budget
Lighting	$5,671,775.04	-$1,100,000	$4,571,775.04
Appliance Rebate	$1,042,630	+$650,000	$1,692,630
New Homes	$1,640,250	+$250,000	$1,890,250
Residential HVAC	$1,917,132	+$200,000	$2,117,132

a. The increase to the Appliance Rebate Program's incentive budget would be used to promote non-lighting kits through food bank organizations and the heat pump water heater (HPWH) measure by increasing the "up to" amount for the HPWH measure from $700 to $1,200 to increase participation and provide the program with flexibility to adjust to market fluctuations and the impacts of the Inflation Reduction Act ("IRA").[54]

b. SMECO's New Homes Program is currently on pace to exceed its annual goal and budget due to a strong pipeline of projects. The increased incentives budget would help ensure that the program can continue operating without impact on potential participants in 2023 and would also be used to increase the "up to"

[51] *Id*. at 2.
[52] *Id*.
[53] *Id*. at 4-5.
[54] *Id*. at 2.

amount for the HPWH measure from $500 to $1,200 to increase participation and provide the program with flexibility to adjust to market fluctuations and the impacts of the IRA.[55]

c. The Residential HVAC Program has currently allocated 100% of its incentive budget to participating distributors and would use the additional funds to continue recruiting new distributors and contractors to the program. SMECO also proposes increasing the "up to" incentive amounts per measure as presented below to increase participation and provide the program with flexibility to adjust to market fluctuations and the impacts of the IRA.[56]

Equipment Type	Efficiency Specification	Current "up to" amount	Proposed "up to" amount
Air Source Heat Pump Tier 1	≥ 16 SEER, ≥ 12.5 EER, ≥ 9 HSPF	$400	$800
Air Source Heat Pump Tier 2	≥ 18 SEER, ≥ 12.5 EER, ≥ 9.5 HSPF	$650	$1,300
Central Air Conditioner Tier 1	≥ 16 SEER, ≥ 12.5 EER	$300	$600
Central Air Conditioner Tier 2	≥ 18 SEER, ≥ 12.5 EER	$500	$1,000
Ductless Mini Split Heat Pump	≥ 18 SEER, ≥ 12.5 EER, ≥ 9 HSPF	$250	$500
Multi-Zone Ductless Mini Split HP	≥ 15.5 SEER, ≥ 12.5 EER, ≥ 8.6 HSPF	$400	$800
Geothermal Heat Pump	≥ 17.1 EER, ≥ 3.6 COP	$1,500	$3,000

[55] *Id*. at 3.
[56] *Id*.

23. SMECO's Lighting Transition Plan also proposes the following adjustments to outside services, utility administration, and marketing budgets:

a. $209,650, or 40% of the outside services budget, would be transferred as shown below and used to support outreach, recruitment, additional rebate processing, and IT updates to reflect new incentive levels.[57]

Program	2013 Budget	Adjustment	Revised Budget
Lighting	$524,133	-$209,650	$314,483
Appliance Rebate	$639,247	+$136,272	$775,519
Residential HVAC	$317,226	+$73,378	$390,604

b. $12,215, or 40% of the utility administrative budget, would be transferred as shown below and used by the SMECO program management team to evaluate and approve new incentive levels and manage program changes and implementation.[58]

Program	2013 Budget	Adjustment	Revised Budget
Lighting	$30,540	-$12,215	$18,325
Appliance Rebate	$23,133	+$6,718	$29,851
Residential HVAC	$24,308	+$5,497	$29,805

c. $123,323, or 60% of the marketing budget, would be transferred as shown below and used to develop and update marketing collateral to reflect changes to the incentive levels for the heating, ventilation, and air conditioning ("HVAC") and HPWH measures.[59]

[57] *Id*. at 4.
[58] *Id*.
[59] *Id*.

Program	2013 Budget	Adjustment	Revised Budget
Lighting	$203,704	-$123,323	$80,381
Appliance Rebate	$202,991	+$71,673	$274,664
Residential HVAC	$105,167	+$51,650	$156,817

24. The Commission notes that no parties opposed SMECO's requests, and that the requests do not involve any additional funding being provided to SMECO. Rather, transfers and increased incentives are within SMECO's existing budgets. The Commission finds that SMECO's requests are a proactive and responsible approach towards reallocating not only some of its lighting budget, but also its attention and emphasis from its Residential Lighting Program to other programs. SMECO's requests are also responsive to discussions and recommendations within the Midstream Work Group as to how to increase participation in HPWH and HVAC offerings. For these reasons, the Commission approves SMECO's proposed Lighting Transition Plan.

F. Midstream Work Group

25. In Order No. 90003, the Commission directed the Midstream Work Group to convene for the purpose of reviewing successful midstream program strategies and developing improved midstream practices for HVAC and HPWH measures.[60] On April 15, 2022, the Midstream Work Group filed a preliminary status report, stating that it was unable to complete the review as directed due to time constraints and the unavailability of certain information.[61] At the Commission's further direction,[62] the Work Group convened

[60] Maillog No. 238168 at 6 (December 14, 2021).
[61] Maillog No. 240222 at 1-2 (April 15, 2022).
[62] Maillog No. 241115, Order No. 90261 at 10 (June 15, 2022).

monthly to follow-up on the preliminary report and filed a status report on October 17, 2022.[63]

26. The Work Group noted in the report that its primary objective was to continue incentive and implementation design-related discussions, with a focus on perspectives on the current residential HVAC and HPWH incentive and implementation designs in Maryland as well as other jurisdictions.[64]

27. The Work Group identified reducing payment lag times and the conversion to instant rebates and other incentive design issues as the dominant theme of its discussions.[65] The Work Group was unable to arrive at a consensus regarding the need for instant rebates and whether they should be offered in place of other rebate designs.[66] The utilities object to instant rebates, claiming that trade allies are not expressing a clear need for them, distributors may be unwilling to participate since it would mean them paying contractors before receiving their own payments, and increased difficulty with equipment verification and program evaluation.[67]

28. OPC and HACC/AACP disagree, claiming that too few contractors were interviewed to support the utilities' conclusions.[68] Staff further states that no conclusive statement regarding instant rebates can be drawn from the contractor interviews, that participants focused more on the need to minimize paperwork than payment lag times, and that smaller contractors were not adequately represented in the Work Group's interviews.[69]

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[63] Maillog No. 242685 (October 17, 2022).
[64] Midstream Work Group Report at 2.
[65] *Id*. at 3.
[66] *Id*.
[67] *Id*.
[68] *Id*.
[69] *Id.*

29. The Work Group noted that the lack of involvement from smaller contractors means further investigation is needed to learn their position(s) on the above matters.[70] The Midstream Work Group agrees that further discussion and study is needed of, among other things, rebate design, program participation, and more unified program implementation.[71]

30. The Commission directs the Work Group to continue researching the issue of payment lag times, and to include more small contractors in the research process. The Work Group is further directed to file a status report by April 17, 2023, to include updated findings, detail any potential opposition to instant rebates from distributors as well as suggested remediation methods, options for reducing the amount of paperwork associated with current incentives as well as instant rebates, and the positions stated by small contractors interviewed.

31. The Midstream Work Group agreed upon the use of the following terms, with definitions as stated in its report: Distributor Midstream, Contractor Midstream, Retail Midstream, Midstream Retail-Hybrid, Traditional Downstream, Upstream Program. The Commission approves these consensus terms and definitions as stated on page 5 of the Midstream Work Group Report.

32. As part of the Midstream Work Group, the utilities sought to identify ways to improve consistency and efficient marketing engagement by implementing more unified programs. Upon reviewing their various implementation approaches, the utilities determined that they are not significantly misaligned in terms of providing consistent midstream programs.[72] The utilities did, however, identify three areas where they could

[70] *Id*. at 4.
[71] OPC Comments at 14.
[72] Midstream Work Group Report at 7.

provide greater consistency among their programs: implementing more uniform passthrough requirements for incentives, aligning program attribution methods for incentives, and increasing contractor and customer education about their respective programs.[73] As the Commission has always supported program consistency among the utilities when appropriate and achievable, the Commission encourages the utilities to work towards improving the consistency of the three identified areas noted above, and directs the Midstream Work Group to include an update on the utilities' progress in the April 17, 2023 status report.

33. HACC/AACP recommends that the Commission eliminate the Energy Efficiency Ratio ("EER") criteria from HVAC units as an energy efficiency requirement.[74] HACC/AACP defines EER as a measure of how efficiently a cooling system will operate when the outdoor temperature is at a specific level (95 degrees Fahrenheit), and states that the EER ratings are thus more important in very warm climates, where the rating measures an air conditioning system that is always running at full-load.[75] HACC/AACP explains that the Department of the Environment ("DOE") is removing EER as an energy efficiency requirement for HVAC units from all geographic areas in the country except the southwest region.[76] HACC/AACP therefore recommends that the EmPOWER Maryland program do the same, given that the criteria is no longer applicable in EmPOWER's geographic area,

[73] The Commission notes that improvement of the third area of inconsistency would also satisfy the recommendation made by OPC and HACC/AACP to "significantly increase customer marketing and education activities." *Id*. at 8.
[74] *Id*. at 9; HACC/AACP Comments at 3.
[75] HACC/AACP Comments at 3.
[76] *Id*.

and that continuing to keep it as a requirement will continue to unnecessarily exclude otherwise eligible systems that could enable more energy savings.[77]

34. The Joint Utilities oppose HACC/AACP's recommendation, holding that the EER rating should continue to be included in the HVAC Midstream Program.[78] Potomac Edison explained that Energy Star and other industry associations such as the Consortium of Energy Efficiency will continue to utilize the EER criteria, and also disagreed with HACC/AACP, stating, "DOE is not stepping away from the EER. That's a continuation of current [practice]. So I wouldn't view that as a change."[79] SMECO added that Energy Star is considering removing the EER criteria, as well, and that if Energy Star does, SMECO would be comfortable with dropping the EER requirement.[80]

35. Energy Star is an Environmental Protection Agency ("EPA") program that customers are familiar with and associate with energy savings. It is more than a marketing tool in that its brand provides customers with the comfort of knowing that they have purchased an efficient unit. If Energy Star and other industry associations continue to recognize the EER criteria, the Commission finds that the EmPOWER Maryland programs also should. The Commission therefore denies HACC/AACP's recommendation to eliminate the EER criteria from HVAC units as an energy efficiency requirement. The Commission does, however, direct the Midstream Work Group to monitor Energy Star's use of the EER requirement, and to advise the Commission if, and when, Energy Star discontinues its use.

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[77] *Id*. at 4.
[78] Tr. at 62:20-23.
[79] Tr. at 63:12-14 and 65:17-19.
[80] Tr. at 77:19-22.

G. ERPI Work Group

36. In Order No. 90261, the Commission directed the ERPI Work Group to file a status report on statewide sales data, transparency in program development, and greenhouse gas ("GHG") reporting.[81] The Work Group filed its report on October 17, 2022.[82]

37. Regarding statewide sales data, the Joint Utilities were directed to investigate and report back to the ERPI Work Group on the feasibility of gaining the sales data requested by OPC for inclusion in the Midstream Program reporting. The Work Group report outlined the steps taken by the utilities, including reaching out to their distributors and to trade organizations, researching third-party reports available on the internet, and the Energy Star Unit Shipment Report. The utilities found that their distributors were not willing to share sales information as it is proprietary and confidential.[83] Trade organizations require membership subscriptions in order to obtain data, with subscriptions ranging in price and information provided, and all subscribing members prohibited from sharing the information received.[84] All third-party reports found were at a higher level than the state level which the Commission is seeking.[85] Regarding the Energy Star Unit Shipment Report, the EPA releases this data only as aggregated data and only to the extent required by law. The EPA does create a summary report each year, but it only includes Energy Star items and is provided at the national level.[86]

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[81] Maillog No. 242683 (June 15, 2022).
[82] Maillog No. 242683: EmPOWER Reporting and Process Improvement Work Group Report 2021-2023 EmPOWER Maryland Program. (October 17, 2022).
[83] ERPI Work Group Report at 2.
[84] *Id*.
[85] *Id*. at 3.
[86] *Id*.

38. While discussing alternative ways to obtain the desired data, a suggestion was made within the Work Group to use publicly available regional data to estimate a sales number in Maryland to compare to efficient equipment sales in the EmPOWER program.[87] The ERPI Work Group is directed to explore this option further, and to file a status report containing its findings by April 17, 2023.

39. Regarding transparency in EmPOWER Maryland program development, the ERPI Work Group was directed to consider changes to the program development process to ensure transparency and greater opportunities for stakeholder and third-party participation, including the annual Technical Conference and the overall utility planning process, while preserving the utility administrators' statutory authority over their suite of programs. The Work Group reviewed the current process for program development and discussed how to improve the transparency of the process and increase stakeholder involvement in the process.[88]

40. While there was a consensus on the need to increase stakeholder participation and transparency, a consensus could not be reached on the scope and timing of the changes to be made to the process.[89] The Joint Utilities and OPC provided recommendations for increasing participation in both the solicitation of ideas and during review of the utility draft plans.[90] At the hearing, Staff, OPC, and the Joint Utilities agreed that additional time would benefit the Work Group, that the Work Group should be able to reach a consensus, and that there is a middle ground between the two recommendations.[91] The Commission

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[87] *Id*.
[88] *Id*. at 3.
[89] *Id*. at 3-4.
[90] *Id*.
[91] Tr. at 136:6-13, 136:19-22, 137:14-23.

therefore directs the Work Group to continue to work together to establish the appropriate time frame for the program planning process, and to file a status report on the matter by April 17, 2023.

41. Regarding GHG reporting, the ERPI Work Group reached the following consensus proposal for the reporting of GHG in the semi-annual EmPOWER reports:

> 1. GHG reporting will include savings for electricity and natural gas.
>
> 2. Energy savings will be net of decreases and increase in usage. For example, a Combined Heat and Power job may increase the use of natural gas and the increases will offset other energy savings.
>
> 3. GHG savings will be reported at the program level.
>
> 4. Loper Energy will calculate the GHG savings by program and by utility for 2021 and 2022.
>
> 5. Loper Energy will provide the GHG savings to stakeholders no later than March 15, 2023.
>
> 6. Loper Energy will develop a template the utilities can use to report GHG savings for the Semi-Annual reports for the 2023 program year reports.
>
> 7. GHG reporting may change for the 2024-2026 program cycle and beyond if necessary.
>
> 8. The Joint Utilities will not provide the mini-table of GHG savings in the upcoming semiannual report to be filed in February 2023 to avoid conflict with the future reporting processes.[92]

The Commission approves this process for GHG reporting in EmPOWER Maryland.

IT IS THEREFORE, this 2nd day of December, in the year Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

[92] ERPI Work Group Report at 4.

(A) DHCD's request to adjust its outside services, marketing, and customer benefits budgets as shown on pages 16 and 17 of its Report is approved;

(B) DHCD's request to require only Staff approval for any future adjustments in the 2021-2023 program cycle from its outside services and marketing budgets to its customer benefits budget is approved;

(C) Delmarva's budget transfer requests as stated herein are approved;

(D) BGE's request to expand its Midstream Program as stated herein is approved;

(E) Potomac Edison's request to implement a CVR Program is approved as filed;

(F) SMECO's proposed Lighting Transition Plan is approved as filed;

(G) The Midstream Work Group is directed to continue researching the issue of payment lag times and to file a status report as stated herein by April 17, 2023;

(H) The consensus terms and definitions identified on page 5 of the Midstream Work Group Report are accepted;

(I) HACC/AACP's recommendation to eliminate the EER criteria from HVAC units as an energy efficiency requirement is denied;

(J) The Midstream Work Group is directed to monitor Energy Star's use of the EER requirement, and to advise the Commission if and when Energy Star discontinues its use;

(K) The ERPI Work Group is directed to file a status report on its findings regarding the use of publicly available regional sales data as stated herein by April 17, 2023;

(L) The ERPI Work Group is directed to file a status report on its establishment of an appropriate time frame for the program planning process by April 17, 2023; and

(M) The ERPI Work Group proposal for GHG reporting is approved.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar
Commissioners