ORDER NO. 86979

IN THE MATTER OF THE POTOMAC EDISON COMPANY D/B/A ALLEGHENY POWER'S ENERGY EFFICIENCY, CONSERVATION AND DEMAND RESPONSE PROGRAMS PURSUANT TO THE EMPOWER MARYLAND ENERGY EFFICIENCY ACT OF 2008	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9153

Issue Date: May 7, 2015

On October 20 – 24, 2014, the Public Service Commission of Maryland ("Commission") held a legislative-style hearing in the above-captioned case to review, among other matters, the 2015 – 2017 EmPOWER Maryland Proposal filed by The Potomac Edison Company ("PE" or the "Company").[1] In accordance with the EmPOWER Maryland Energy Efficiency Act of 2008 ("EmPOWER"),[2] the Commission also reviewed the comments filed by its Technical Staff ("Staff");[3] the Office of People's Counsel ("OPC");[4] the Maryland Energy Administration ("MEA");[5] the Western Maryland Municipals;[6] the Coalition of Maryland Energy Efficiency

[1] ML#158100: *The Potomac Edison Company – Energy Efficiency and Conservation Plan January 1, 2015 through December 31, 2017* ("PE 2015-2017 Proposal") (Sept. 2, 2014); ML#159205: *Comments on EmPOWER Maryland Filings* ("PE Comments") (Oct. 3, 2014).
[2] Public Utilities Article ("PUA") § 7-211.
[3] ML#159240: Staff Comments (Oct 3, 2014); ML#159573: Staff Errata Comments (Oct. 17, 2014).
[4] ML#159246: *Office of People's Counsel Comments on EmPOWER Maryland* ("OPC Comments") (Oct. 3, 2014); ML#159546: *Errata to OPC Comments* ("OPC Errata Comments") (Oct. 16, 2014).
[5] ML#159239: *Maryland Energy Administration Comments on the Utilities' EmPOWER Maryland 2015-17 Plans* ("MEA 2015-2017 Proposal Comments") (Oct. 3, 2014); ML#158129: *Maryland Energy Administration Policy and Program Recommendations* ("MEA Recommendations") (Sept. 2, 2014).
[6] ML#159222: *Response to EmPOWER Program Proposed Policy Change* (Oct. 3, 2014).

Advocates;[7] Aegis Energy Services, Inc.;[8] Bluestone Energy Services;[9] EnSave, Inc.;[10] Efficiency First;[11] the National Housing Trust, Natural Resources Defense Council, and National Consumer Law Center ("NHT/NRDC/NCLC");[12] the Maryland Alliance for Fair Competition and the Air Conditioning Contractors of America, Central Maryland Chapter ("the Alliance");[13] Civic Works, Inc.;[14] and the U.S. Department of Energy ("DOE").[15]

On January 22, 2015, PE filed a Request for Rehearing of Commission Order No. 86785 ("Rehearing Request") issued in this proceeding on December 23, 2014 with respect to the Company's 2015 – 2017 EmPOWER proposal.[16] In its Rehearing Request, the Company argued additional facts that it alleged were not considered by the Commission in reaching its decision.[17] Specifically, PE requested rehearing of: (1) the finding that it must align its Commercial and Industrial ("C&I") Custom Program incentives with those offered by BGE, DPL, Pepco, and SMECO; (2) the determination that it must remove Combined Heat and Power ("CHP") projects from its Custom Program and instead conform its CHP incentive structure to that proposed by other electric distribution companies; and (3) the denial of the Company's proposed implementation flexibility request, which would allow the Company to shift incentive levels among programs by a maximum of 25% and to shift budgeted monies between programs in a

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7 ML#159282: *Comments of the Coalition of Maryland Energy Efficiency Advocates* (Oct. 8, 2014).
8 ML#159084: *Comments on 1st 2014 Semi-Annual Reports and 2015 Plans for EmPOWER Maryland* (Oct. 1, 2014).
9 ML#159207: *Comments* (Oct. 3, 2014).
10 ML#159209: *Comments* (Oct. 3, 2014).
11 ML#159076: *Efficiency First Maryland Comments in support of the residential retrofit industry in Maryland* (Oct. 1, 2014).
12 ML#159215: *National Housing Trust, Natural Resources Defense Council, and National Consumer Law Center Comments on EmPOWER Maryland Programs* (Oct. 3, 2014).
13 ML#159247: *Maryland Alliance for Fair Competition and the Air Conditioning Contractors of America, Central Maryland Chapter Comments* (Oct. 3, 2014).
14 ML#159206: *Comments* (Oct. 3, 2014).
15 ML#159202: *Comments* (Oct. 3, 2014).
16 ML#163520: *Request for Rehearing of The Potomac Edison Company* ("PE Rehearing Request") (Jan. 22, 2015).
17 *Id.* at 1.

given sector.[18] In response to the Company's Rehearing Request, the Commission solicited comments from its Staff and other interested parties. EXERGY Partners Corporation filed comments on February 16, 2015;[19] Staff filed comments on February 20, 2015.[20]

In this Order, after fully considering the Company's request and comments from other parties, we affirm Order No. 86785, subject to the limited modifications outlined herein.

Commission Decision

C&I Custom Program

The EmPOWER Custom Program is designed to encourage C&I customers to install specialized energy efficiency measures that are not included as standard measures in the EmPOWER Prescriptive Program. As part of the 2015 – 2017 program cycle proposals, each of the Utilities proposed various structural changes to the Custom Program; however, four of the companies (BGE, DPL, Pepco, and SMECO) recommended a continuation of the same standardized rebate levels offered in the 2012 – 2014 program cycle.[21] The four companies recommended a Custom Program incentive structure of up to 50% of the total project cost, capped at $0.28 per kWh saved and contingent upon demonstration of an 18-month payback period. In its 2015 – 2017 Proposal, PE proposed a flat rate Custom Program incentive structure consisting of $0.05 per kWh saved based on annualized energy savings, capped at 50% of total project costs,[22] because this lower per kWh amount is comparable to the amount for similar programs run by PE's affiliates in Pennsylvania.

[18] *Id.* at 1-2.
[19] ML#164181: *EXERGY Partners Corporation's comments on The Potomac Edison Company's request for rehearing* (Feb. 16, 2015).
[20] ML#164261: *Staff Response to Potomac Edison's Request for Rehearing* (Feb. 20, 2015).
[21] Staff 2015 – 2017 Planning Cycle Comments at 90.
[22] PE 2015 – 2017 Proposal at 105.

Leading up to the October 2014 semi-annual hearings, Staff endorsed the majority's incentive recommendation and noted its preference that all of the Utilities "offer comparable incentives and similar program designs to ensure consistency and clarity for customers across service territories."[23] Furthermore, Staff noted that PE did not adequately demonstrate the need to offer a separate and markedly different Custom Program incentive structure as compared to the other four EmPOWER Maryland Utilities.[24] Therefore, based in part on Staff's observations and in part on the Commission's stated policy to standardize EmPOWER programs statewide when possible, in Order No. 86785 we conditioned approval of PE's Custom Program proposal for the 2015 – 2017 program cycle on conforming its incentive structure with the other Utilities.[25]

In its Rehearing Request, PE asserted that an alternative incentive structure is supported by research indicating that incentive levels for comparable programs in other states are offered in a range of three to seven times less than the incentive structure adopted by the Commission in Order No. 86785.[26] The Company also alleged that adopting the standardized incentive structure will result in "unnecessarily large payouts with a significant rate impact" and the over-subsidization of program participants.[27] PE therefore requested that the Commission reconsider its request to implement a non-standardized incentive structure for its Custom Program during the 2015 – 2017 program cycle.

As noted in the Company's 2015 – 2017 proposal, the primary objective of the Custom Program is "to accelerate the adoption and increase the market share of high efficiency

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[23] Staff 2015 – 2017 Planning Cycle Comments at 91.
[24] *Id.* According to Staff, when questioned regarding its significantly different incentive proposal, PE justified its proposal with superficial responses relating to industry best practices and offerings in sister service territories.
[25] Order No. 86785 (Dec. 23, 2014), at 16-17.
[26] PE Rehearing Request at 3.
[27] *Id.* at 2-7.

equipment among commercial and industrial customers."[28] To achieve this objective, and realize the Commission's oft-cited goal of realizing deeper energy savings, it is important to design the program's incentive structure to facilitate investment in more than just lighting projects. Since many of the lower incentive structures the Company cited are designed either primarily or solely to incent lighting projects, and recognizing Staff's observation that states with lower efficiency goals require less aggressive incentive offerings,[29] we are not persuaded at this time to approve the Custom Program incentive structure proposed by PE. We also observe that the most recent cost-effectiveness evaluation of the PE Custom Program concluded that 70% of the first-year savings relied on these lighting measures.[30]

Furthermore, we are not persuaded by the other assertions proffered by the Company, specifically that our decision to standardize the incentive structure will "needlessly harm" non-participating businesses in the PE service territory.[31] First, as noted by Staff, the higher incentives may encourage additional businesses interested in deeper and specialized building shell improvements to participate in the Custom Program.[32] In addition, existing third-party, independent evaluation, measurement, and verification ("EM&V") processes are designed to evaluate free ridership, which allows for the proactive monitoring and adjustment of programs should over-subsidization issues arise. Moreover, our decision to standardize the incentive structure in Order No. 86785 did not authorize a different budget allocation to the Company's Custom Program (and thus did not impact the C&I surcharge, contrary to PE's assertions); rather, our decision provides the framework for C&I customers in the PE service territory to

[28] PE 2015 – 2017 Proposal at 102.
[29] Staff Rehearing Request Comments at 3.
[30] ML#159212: *Verification of EmPOWER Maryland Program Year 2013 Cost-Effectiveness Analysis*, Itron (Oct. 1, 2014) at 7.
[31] PE Rehearing Request at 3.
[32] Staff Rehearing Request Comments at 3.

pursue projects that drive deeper energy savings. There should be no impact to the C&I surcharge, until customers participate in the program. Therefore, our directive in Order No. 86785 requiring PE to align its C&I Custom Program incentives with those offered by BGE, DPL, Pepco, and SMECO is hereby affirmed.[33]

C&I Combined Heat and Power Program

The EmPOWER Combined Heat and Power Program is designed to incent CHP projects appropriately sized for use at a customer's site, rather than to encourage projects designed for exporting power to the grid.[34] In recognition that smaller projects may encounter hurdles due to higher per-kW installation costs, three companies (BGE, DPL, and Pepco) proposed as part of the 2015 – 2017 program cycle a tiered incentive structure dependent on project size. The remaining companies (PE and SMECO) proposed to retain the CHP offering as a sub-component of the C&I Custom Program, with PE further diverging from the other EmPOWER Maryland Utilities by proposing a lower Custom Program incentive structure.

As noted by Staff in advance of the October 2014 semi-annual hearings, while the initial ramp-up for CHP programs was slow, the pipeline for the three utilities (BGE, DPL, and Pepco) offering stand-alone CHP programs is promising.[35] By comparison, Staff observed a marked shortfall in terms of completed jobs and the pipeline for CHP projects in PE's service territory.[36] Finding that the CHP initiative warranted its own stand-alone program and marketing efforts, in Order No. 86785 we directed PE to remove its CHP offering from a sub-component of its

[33] Order No. 86785 (Dec. 23, 2014), at 39.
[34] ML#138468: *Addition of a Combined Heat and Power Program in Support of EmPOWER Maryland's Case Nos. 9154, 9155, and 9156* (April 13, 2012), at 2.
[35] Staff 2015 – 2017 Planning Cycle Comments at 101.
[36] *Id.* at 91.

Custom Program and to instead operate it as a stand-alone program consistent with the CHP incentive structure authorized for the other EmPOWER Maryland Utilities.[37]

In its Rehearing Request, PE asserted that its relatively small C&I customer base and the limited CHP potential in its service territory justify the alternative incentive structure advocated for in the Company's 2015 – 2017 program cycle proposal.[38] PE further commented that the CHP production incentive should be based on the actual savings of the CHP installation rather than the electrical output of the unit.[39] For these reasons, PE requested that the Commission revisit its decision in Order No. 86785 and instead permit the Company to continue offering CHP incentives within its Custom Program and at the incentive levels included in PE's 2015 – 2017 proposal.

Given the underwhelming pipeline for CHP projects in the PE service territory, we are persuaded by Staff's reasoning that permitting the Company to subsume the CHP offering within its Custom Program will keep administrative and evaluation costs lower in the near-term.[40] However, we expect PE to improve its CHP offering compared to its performance to-date. Therefore, we modify our decision in Order No. 86785 to allow PE to retain its CHP offering as a sub-program within the broader C&I Custom Program, but we affirm our decision to require specific marketing for CHP incentives so that customers are better aware and informed of the available opportunities and incentives.

Similarly, we affirm our earlier decision to require PE to align its CHP incentive structure with that approved for the other EmPOWER Maryland Utilities in Order No. 86785.[41] Staff,

[37] Order No. 86785 at 16-17.
[38] PE Rehearing Request at 7-8.
[39] *Id.* at 8.
[40] Staff Rehearing Request Comments at 4.
[41] While PE is hereby permitted to offer CHP as a sub-component of its Custom Program, the Company must offer the CHP incentives adopted in Order No. 86785 to eligible CHP projects.

MEA, stakeholders, and other EmPOWER Maryland Utilities advocated for the CHP incentive structure adopted in our Order as part of the October 2014 proceedings,[42] and we received comments in response to this inquiry disputing the arguments outlined in PE's Rehearing Request.[43] At least two stakeholders offered comments refuting PE's general assertion that its service territory is largely unsuitable for CHP projects,[44] with EXERGY noting a 2011 study conducted by the US Department of Energy regarding the technical potential for CHP in Maryland.[45] Additionally, we observe that our decision to adopt the tiered incentive structure based on CHP project size is supported by a review of best practice programs nationwide.

<u>The Company's Proposed Implementation Flexibility</u>

In its 2015 – 2017 program cycle proposal and comments at the October 2014 semi-annual hearings, PE recommended that the Commission allow the Company flexibility to shift incentives by up to 25% with advance notice to Staff and other stakeholders, and to shift budgeted money between programs in a given sector with Staff approval.[46] PE notes in its Rehearing Request that Order No. 86785 is silent on this matter, and thus the Company is asking for reconsideration of this issue.[47]

As a preliminary matter, we affirm that the December Order's silence on PE's request did not constitute our approval. In Order No. 85775, and again in Order No. 85987, we sought to streamline and address budget requests more efficiently, and to encourage the Utilities and DHCD to forecast their program budgets and performance more accurately and realistically.[48] We concluded that semi-annual budget adjustment requests will allow the Commission to

[42] *See, e.g.* Staff 2015 – 2017 Planning Cycle Comments at 101-104; MEA Recommendations at 40.
[43] *See* EXERGY Comments at 1-6.
[44] PE Rehearing Request at 7.
[45] EXERGY Comments at 5.
[46] PE Rehearing Request at 9-10.
[47] *Id.* at 13.
[48] Order No. 85987 (Nov. 12, 2013), at 4.

consider them in the context of a specific program's performance and in comparison to the performance of other EmPOWER Maryland Utilities' programs.[49] We are not persuaded by PE that shifting budgeted monies and adjusting incentive levels by 25% represents a warranted exception to the Commission's standardization goal, budget adjustment and program modification process, or reasoning outlined in prior Commission orders.

Furthermore, we observe that the Company's concept of "advanced notice" would weaken the benefits of the stakeholder process. While we do not require that budget adjustments or program modifications receive stakeholder-wide endorsement prior to receiving Commission approval, we find that it is inappropriate to authorize the significant implementation flexibility requested by PE – a process that does not contemplate an opportunity for prior stakeholder input or Commission review. The EmPOWER Work Group process is intended to facilitate robust discussion in advance of significant program modifications and to allow all interested parties an opportunity to advocate for their respective interests. In turn, the Commission considers a program modification in light of stakeholder input and the applicable statutory factors, including the impact on rates of each ratepayer class and whether the program modification or budget adjustment is appropriate.[50]

Finally, we note that the three-year program cycle is frequently touted for the flexibility it lends to program implementation. This also applies to approval of program budgets, as we previously have stated that the Utilities may operate within the three-year budget categories approved for an individual program. We also previously authorized Staff to approve requests to adjust the incentives up to a maximum of plus or minus 10%, provided the adjustments are

[49] *Id.*
[50] Public Utilities Article § 7-211(i)(1).

consistent with optimizing cost-effectiveness and program attractiveness.[51] Should a utility exhaust the flexibility afforded by these policies, it may seek a budget adjustment or program modification from the Commission through the established semi-annual process. Proactive engagement and implementation of these energy efficiency programs should afford ample time to request a budget adjustment during the three-year program cycle, and in the event that Staff holds that a request warrants our interim attention, we are committed to such a review.[52]

IT IS THEREFORE, this 7th day of May, in the year Two Thousand Fifteen, by the Public Service Commission of Maryland,

ORDERED: (1) That Potomac Edison's Request for Rehearing is DENIED; and that Commission Order No. 86785 is AFFIRMED subject to the limited modifications outlined herein, thereby permitting Potomac Edison to include its CHP Program as a sub-component of its Custom Program subject to the CHP incentive structure adopted in Order No. 86785; and

(2) That Potomac Edison's requested flexibility to change incentive levels by a maximum of 25% and to shift budgeted amounts between programs within the same sector is hereby denied.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Lawrence Brenner

/s/ Kelly Speakes-Backman

/s/ Anne E. Hoskins
Commissioners

[51] Order No. 84569 (Dec. 22, 2011), at 7.
[52] *See* Order No. 85987 at 3-4.