

ORDER NO. 86980

IN THE MATTER OF 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

IN THE MATTER OF BALTIMORE GAS AND
ELECTRIC COMPANY’S ENERGY EFFICIENCY,
CONSERVATION AND DEMAND RESPONSE
PROGRAMS PURSUANT TO THE EMPOWER
MARYLAND ENERGY EFFICIENCY ACT OF 2008

CASE NO. 9154

IN THE MATTER OF POTOMAC ELECTRIC
POWER COMPANY’S ENERGY EFFICIENCY,
CONSERVATION AND DEMAND RESPONSE
PROGRAMS PURSUANT TO THE EMPOWER
MARYLAND ENERGY EFFICIENCY ACT OF 2008

CASE NO. 9155

IN THE MATTER OF DELMARVA POWER &
LIGHT COMPANY’S ENERGY EFFICIENCY,
CONSERVATION AND DEMAND RESPONSE
PROGRAMS PURSUANT TO THE EMPOWER
MARYLAND ENERGY EFFICIENCY ACT OF 2008

CASE NO. 9156

IN THE MATTER OF SOUTHERN MARYLAND
ELECTRIC COOPERATIVE, INC.’S ENERGY
EFFICIENCY, CONSERVATION AND DEMAND
RESPONSE PROGRAMS PURSUANT TO THE
EMPOWER MARYLAND ENERGY EFFICIENCY
ACT OF 2008

CASE NO. 9157

IN THE MATTER OF WASHINGTON GAS LIGHT
COMPANY’S ENERGY EFFICIENCY,
CONSERVATION AND DEMAND RESPONSE
PROGRAMS PURSUANT TO THE EMPOWER
MARYLAND ENERGY EFFICIENCY ACT OF 2008

CASE NO. 9362

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 cases to review, among other matters, the 2015 – 2017 EmPOWER Maryland proposal filed by the Maryland Department of Housing and Community Development (“DHCD”).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 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

¹ ML#158140: *Maryland Department of Housing and Community Development EmPOWER Low Income Energy Efficiency Program 2015 – 2017 Proposal* (“DHCD LIEEP Proposal”) (Sept. 2, 2014); ML#158207: *DHCD Plan for 2015 – 2017 EmPOWER Maryland Limited Income Energy Efficiency Program Errata* (“DHCD Sept. 2nd Errata”) (Sept. 2, 2014); ML#158679: *DHCD’s EmPOWER 2015-17 Low Income Energy Efficiency Programs Proposal Errata* (“DHCD Sept. 16th Errata”) (Sept. 16, 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).

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).

Conditioning Contractors of America, Central Maryland Chapter (“the Alliance”);¹³ Civic Works, Inc.;¹⁴ and the U.S. Department of Energy (“DOE”).¹⁵

On February 4, 2015, DHCD filed a motion to clarify, amend, and revise various sections of Commission Order No. 86785 (“Motion”) issued in this proceeding on December 23, 2014 with respect to DHCD’s 2015 – 2017 EmPOWER proposal.¹⁶ Through its Motion, DHCD requests clarification of: (1) the criteria by which the Agency will be evaluated at the conclusion of calendar year 2015; (2) the conditions required to exceed the \$7,500 spending limit; and (3) the conditions for dispensing with the requirement for the use of leveraged funds. Furthermore, because the Agency asserts that such protocols already exist in-house, DHCD requests that the Commission amend the portions of Order No. 86785 directing the Limited-Income Work Group to develop a prescribed list of measures, price list, and review process as it applies to larger, more costly equipment. Lastly, DHCD requests that the Commission reconsider the requirement of an up-front landlord investment of at least 50% of the total cost of large measures funded by the EmPOWER surcharge.¹⁷

In this Order, we address the motion made by DHCD to clarify, amend, and revise various sections of Commission Order No. 86785. After fully considering DHCD’s Motion, we hereby affirm Order No. 86785, subject to the limited clarification provided herein.

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#163797: *DHCD Motion to Amend Portions of Commission Order No. 86785* (Feb. 4, 2015).

¹⁷ Although filed beyond the time permitted under PUA § 3-114(c), the Commission declines to deny the Motion on this procedural ground alone.

Requests for Clarification

Evaluation Criteria for Program Implementers

In Order No. 86785 we authorized DHCD to continue as the limited-income energy efficiency program implementer through calendar year 2015 only, so that we could reassess the effectiveness of its program implementation in light of concerns expressed by our Staff and other stakeholders.¹⁸ As part of this decision we also adopted several recommendations of the Limited-Income Work Group, largely intended as accountability measures to increase the likelihood that the EmPOWER Maryland limited-income programs will reach as many eligible participants as possible. While acknowledging that the program modifications will have an effect on the production and outcomes of the limited-income energy efficiency programs, through its Motion DHCD requests clarification as to the terms by which it will be evaluated at year-end, citing the need for a “process that is more transparent and productive.”¹⁹

Administering an open, transparent, and productive process is an important objective of the Commission, and unfortunately has been an area of key criticism of DHCD by stakeholders with respect to data reporting and communication protocols.²⁰ Thus, we take this opportunity to restate that DHCD, in its capacity as an EmPOWER Maryland program implementer, is subject to the same reporting and evaluation guidelines as all other EmPOWER Maryland program implementers. On a quarterly basis all program implementers must submit completed templates of forecasted and

¹⁸ Order No. 86785 (Dec. 23, 2014), at 25.

¹⁹ DHCD Motion at 4.

²⁰ See, e.g. OPC LIEEP Comments at 2, stating, “One of the greatest concerns OPC has continued to have is the lack of transparency of information, and similarly, the lack of collection or lack of development of certain data.”

realized metrics such as number of participants, measures, budget expenditures, annualized energy savings, and coincident peak demand savings. On a semi-annual basis, all program implementers must also submit program mini-tables, narratives, and any budget adjustment or program modification requests.²¹ Following these submissions, other interested stakeholders are afforded the opportunity to comment in advance of the semi-annual hearings, at which time the Commission considers program performance in light of forecasted versus realized metrics, cost-effectiveness results, and stakeholder observations regarding program implementation.

In reaching the initial decision to transfer implementation of limited-income programs to DHCD, the Commission noted its expectation that “having DHCD administer the programs would further the previously mentioned goal of maximizing statewide consistency.”²² As noted in its comments, “OPC’s support, and the Commission’s approval, of this transfer of responsibility was predicated on the notions that DHCD (1) would be able to administer these programs more efficiently, and after ramp-up, to greater numbers of households, and (2) would be subject to the same transparency, verification and reporting requirements, given the use of ratepayer funding for the programs.”²³ Furthermore, if it remains unclear, DHCD may look to its own program cycle proposals, as well as its transition and implementation plan filed in February, 2012 for additional guidance regarding program evaluation parameters.²⁴

²¹These terms of evaluation have been previously stated in multiple Commission Orders relating to DHCD. *See, e.g.* Order No. 85775 (Aug. 9, 2013); Order No. 85987 (Nov. 12, 2013), at 4.

²² Order No. 84569 (Dec. 22, 2012), at 10.

²³ Order No. 86366 (May 28, 2014), at 40-41 (quoting ML#153584: OPC Comments at 13).

²⁴ ML#137161: *The Maryland Department of Housing & Community Development EmPOWER MD Low Income Energy Efficiency Program Draft Transition/Implementation Plan* (Feb. 15, 2012). For example, in its transition plan DHCD noted its ability to leverage outside funds, and described its strict quality control and quality assurance measures.

Criteria to Exceed \$7,500 Spending Cap and Leveraged Funds

As we have previously observed, improving the energy efficiency of limited-income households is a critical area of focus under the EmPOWER umbrella. To this end we instituted a framework for accountability in our December Order to address program modifications recommended by the Limited-Income Work Group. One such recommendation resulted in a Commission finding that as a general guideline, EmPOWER-funded expenditures per limited-income household should not exceed \$7,500 – inclusive of all measures.²⁵ We did, however, note two specific exceptions to this expenditure cap; the first exception permits an incremental \$1,000 per eligible household (above the \$7500) to remediate pre-existing health and safety concerns.²⁶ The second exception notes that certain circumstances may justify a higher level of investment, and institutes a higher, “hard cap” on EmPOWER-funded expenditures – inclusive of all measures, as well as health and safety spending – of \$12,000 per limited-income household.²⁷ In both of these instances, the program implementer is required to submit documentation of the best efforts used to leverage outside funds.

Through its Motion, DHCD requests clarification of the “certain circumstances” in which the general spending guideline of \$7,500 may be exceeded.²⁸ In addition to the documentation of best efforts to leverage outside funds, DHCD suggests three prerequisites by which it would authorize spending up to \$12,000 per eligible unit: (1) other leveraged funding is unavailable or inappropriate; (2) the total job earns a savings-

²⁵ Order No. 86785 at 22.

²⁶ *Id.* In the Order, we noted that “health and safety” expenditures allow audits to proceed following the correction of factors such as bathroom ventilation, smoke detectors, and electrical issues.

²⁷ *Id.* at 22-23, note 59.

²⁸ DHCD Motion at 5.

to-investment ratio (“SIR”) of 1.1 or greater; and (3) there is sufficient justification based on a whole house diagnostic energy audit.²⁹

DHCD asserts that it is “familiar with the type of circumstances that would require an investment in excess of \$7,500.”³⁰ Thus, we accept DHCD’s suggested clarification that the “certain circumstances” contemplated by Order No. 86785 include jobs for which other leveraged funding is unavailable,³¹ and the job has a SIR of 1.1 or greater and there is other sufficient justification based on a whole house diagnostic energy audit. We decline, however, to adopt language suggesting that leveraged funding is “inappropriate.”

In Order No. 86785 we explicitly set forth “our expectation that the Agency attempt to leverage outside funds in *all* circumstances”³² – an expectation that is squarely in line with a primary tenet of the DHCD-authored February 2012 transition plan.³³ Moreover, as noted by OPC in advance of the October 2014 semi-annual hearings:

“the program should be able to do more to leverage additional resources to ensure that as many households as possible can take advantage of EmPOWER’s low income programs. It appears, from work group discussions and presentations from DHCD, that there are resources that DHCD could be utilizing to leverage EmPOWER investments, but they are choosing not to do so. For example, the rationale DHCD has provided for not mixing DOE and EmPOWER resources is unclear, and in some cases inaccurate, according to DOE regulations and written guidance.”³⁴

²⁹ *Id.*

³⁰ *Id.*

³¹ We acknowledge that not all limited-income EmPOWER projects may be eligible for federal or other funding sources, and therefore leveraged funding may be “unavailable.” Thus, we have noted our expectation that the Agency *attempt* to leverage funds in all circumstances.

³² Order No. 86785 at 23.

³³ ML#137161: *The Maryland Department of Housing & Community Development EmPOWER MD Low Income Energy Efficiency Program Draft Transition/Implementation Plan* (Feb. 15, 2012) at 6.

³⁴ OPC LIEEP Comments at 13.

Therefore, we acknowledge that circumstances may exist in which other leveraged funding is *unavailable*, but we reject DHCD's proposed standard of the use of leveraged funds being *inappropriate*. Furthermore, as is our policy with every other EmPOWER reporting template, we rely on Staff to coordinate the development of the leveraged funds template contemplated by our Order. In fact, Staff filed this template, among others, in the EmPOWER dockets on March 13, 2015.³⁵ Thus, we affirm our earlier directive requiring DHCD to file its Leveraged Funds Template, as developed by Commission Staff, with its semi-annual report beginning with the upcoming July 31, 2015 filing.

Requests to Amend and Revise Portions of Commission Order No. 86785

Statewide Prescribed List of Measures and Standard Measure Price List

As an additional component of the accountability framework outlined in Order No. 86785, we adopted the Limited-Income Work Group recommendation to collaboratively develop a cost-effective prescribed list of measures by service territory, as well as an accompanying price list for installed measures by service territory. Through its Motion, DHCD requests that the Commission amend its Order to instead adopt the statewide standard measure price list developed by the Agency and appended to its Motion.³⁶

On April 15, 2015, the Limited-Income Work Group filed its summary report to address the Commission's directive, and noted therein that the DHCD proposal appended

³⁵ ML#165078: Staff Report - CN 9153-57, 9362 Proposed Reporting Templates (March 13, 2015).

³⁶ DHCD Motion at 10-11.

to the Agency's February 4, 2015 Motion sufficiently addresses the concerns previously articulated by the Work Group.³⁷ We appreciate the Work Group's consideration, input, and review of the Agency's proposal, as was envisioned by Order No. 86785. We will consider the Work Group's recommendation to adopt the standard measure price list following our review of the proposal as part of the May 2015 semi-annual hearings. As was contemplated by our prior Order, we acknowledge that adoption of a statewide prescribed list of measures and accompanying price list will be on a prospective basis through the RFP process.

Guidelines for Replacement of Larger, More Costly Equipment

A third component of the accountability framework established by Order No. 86785 requires that the program implementer subject larger, more costly measures to certain age and efficiency specifications to first determine whether a replacement is warranted. While acknowledging that "[t]he Commission's instruction is based upon sound reasoning," DHCD's Motion nevertheless requests that we adopt a process and set of review criteria developed solely by DHCD, rather than assigning the task to the Limited-Income Work Group.³⁸

Since the Limited-Income Work Group has already submitted proposed review guidelines for our consideration as part of the upcoming May 2015 semi-annual hearings,³⁹ we will not amend our December Order as requested by DHCD. We continue to expect that DHCD will work collaboratively with the Limited-Income Work Group as well as our Staff. We take this opportunity to remind all parties involved that the

³⁷ ML#167111: *EmPOWER Maryland Work Group summary Report* (April 15, 2015) at 12-13.

³⁸ DHCD Motion at 12.

³⁹ ML#167111: *EmPOWER Maryland Work Group summary Report* (April 15, 2015) at 14-15.

EmPOWER Maryland work group process in general is intended to afford all stakeholders the opportunity to collaborate on program development and implementation strategies. Improving the energy efficiency, and therefore affordability, of limited-income households is an important component of the State's continuing energy efficiency and conservation goal, and as such we welcome the input of all interested parties.

Landlord Contributions

As a complementary component to our prospective guidelines for the replacement of larger, more costly equipment, we accepted the recommendation by the Limited-Income Work Group that landlords must invest at least 50% of the total cost of large measures funded by the EmPOWER surcharge, such as for HVAC unit replacements.⁴⁰ While acknowledging that landlords may refuse to pay for 50% of large measure costs, we noted that the rental household will remain eligible for other fully funded EmPOWER weatherization measures. Furthermore, DHCD may seek to leverage other funding sources to cover the remainder of the large measure costs.⁴¹

In its Motion, DHCD asserts that based on "current input from the weatherization network and landlords, the vast majority of landlords will be unwilling to make an up-front investment for large (or any) measures."⁴² As such, DHCD requests that the Commission revise its prior Order to eliminate any up-front investment by a landlord.

At this time we decline to reverse our decision to require a 50% up-front landlord contribution toward the total cost of all measures. DHCD alleges in its Motion that because of this requirement it will risk losing 20% of its targeted low-income population;

⁴⁰ Order No. 86785 at 24.

⁴¹ *Id.*

⁴² DHCD Motion at 13.

however, DHCD bases this allegation on the faulty premise that the rental property could not benefit from other EmPOWER-funded weatherization programs. On the contrary, DHCD's own proposed statewide standard measure price list delineates a plethora of direct install measures, insulation, duct sealing, HVAC tune-ups and repairs, and appliances for which the rental unit would be eligible, without triggering the up-front landlord investment.⁴³

In further support of its Motion, DHCD asserts that replacing HVAC units through EmPOWER-funded weatherization efforts also addresses safety hazards, and that when the equipment is not replaced, renters rely on other measures such as stoves and space heaters.⁴⁴ We take this opportunity to note that the Public Safety Article, *Annotated Code of Maryland* enforces a minimum livability code applicable to residential structures used for human habitation, which mandates the provision of basic equipment and facilities used for light, ventilation, *heat*, and sanitation. (emphasis added).⁴⁵ In the event that DHCD proposes to weatherize a limited-income rental property that does not possess functioning heating equipment, the landlord should be more than willing to provide a 50% contribution to an energy efficient HVAC unit, as opposed to the 100% contribution to a standard model otherwise required by law.

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

ORDERED: (1) That DHCD's motion to amend and revise portions of

⁴³ DHCD Motion at Exhibit 2.

⁴⁴ *Id.* at 16.

⁴⁵ Public Safety Article § 12-203.

Commission Order No. 86785 is DENIED, and Commission Order No. 86785 is AFFIRMED, subject to the limited clarification provided herein; and

(2) That the spending guideline per eligible limited-income household is set at \$7,500, although DHCD may spend up to \$12,000 per limited-income household only when three conditions are met: (1) other leveraged funding is unavailable and best efforts to leverage outside funds are documented; (2) the total job earns a SIR of 1.1 or greater; and (3) there is sufficient justification based on a whole house diagnostic energy audit.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Lawrence Brenner

/s/ Kelly Speakes-Backman

/s/ Anne E. Hoskins

Commissioners