

**ORDER NO. 87306**

IN THE MATTER OF THE MERGER OF  
 EXELON CORPORATION AND  
 CONSTELLATION ENERGY GROUP, INC.

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BEFORE THE  
 PUBLIC SERVICE COMMISSION  
 OF MARYLAND

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 CASE NO. 9271  
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**Issue Date: December 22, 2015**

In Order No. 85636, issued on June 4, 2013, the Public Service Commission of Maryland (“Commission”) approved a semi-annual disbursement schedule to begin in the first quarter of fiscal year 2014 regarding the distribution of funds from the Customer Investment Fund (“CIF”).<sup>1</sup> In that order, the Commission noted that “[t]he disbursement schedule for fiscal years 2015 and 2016 will be authorized through a separate Commission order to be issued at a later date.”<sup>2</sup> The Commission approved a disbursement schedule for fiscal year 2016 in Order No. 87015, but reserved the right to modify disbursements after the receipt of a report submitted by the Commission’s Technical Staff (“Staff”) addressing the recipients’ fiscal year 2015 annual reports.<sup>3</sup>

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<sup>1</sup> The CIF refers to a \$113.5 million fund designed to provide customers of Baltimore Gas and Electric Company (“BGE”) with energy efficiency, conservation, and low-income energy assistance programs. The CIF was funded by contributions from Exelon Corporation and it was created as a condition of approval of the Exelon – Constellation merger, which was approved by the Commission on February 17, 2012 in Order No. 84698. On November 8, 2012 in Order No. 85187, the Commission approved 16 CIF programs totaling over \$112 million. At this time, the remainder of the CIF has been reserved for administrative costs including program evaluation and management.

<sup>2</sup> Order No. 85636 at 2, n.5.

<sup>3</sup> Order No. 87015 (June 10, 2015) at 2.

Pursuant to the Commission’s directive, on November 18, 2015 Staff filed its review of the CIF Recipients’ fiscal year 2015 annual reports along with specific recommendations to modify the scheduled disbursements for nine of the sixteen CIF programs.<sup>4</sup> Subsequently, the Commission conducted a legislative-style hearing on December 3, 2015 to consider Staff’s recommendations as well as the CIF fiscal year 2015 annual reports filed by the Maryland Energy Administration (“MEA”);<sup>5</sup> the Mayor and City Council of Baltimore City;<sup>6</sup> the Maryland Department of Housing and Community Development (“DHCD”);<sup>7</sup> Comprehensive Housing Assistance, Inc. (“CHAI”);<sup>8</sup> the Baltimore County Sustainable Dundalk Initiative;<sup>9</sup> and the Fuel Fund of Maryland<sup>10</sup> (collectively, the “CIF Recipients”). The Commission also reviewed comments filed by the Maryland Office of People’s Counsel (“OPC”).<sup>11</sup>

During the hearing, the CIF Recipients and OPC commented on the proposed modifications to the fiscal year 2016 disbursement schedule as recommended by Staff, for

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<sup>4</sup> ML#178041: *Comments of the Public Service Commission Staff Regarding the Exelon Customer Investment Fund Recipients’ Annual Reports for Fiscal Year 2015* (“Staff Report”) (Nov. 18, 2015); ML#178955: *Errata Comments of the Public Service Commission Staff Regarding the Exelon Customer Investment Fund Recipients’ Annual Reports for Fiscal Year 2015* (“Staff Errata Report”) (Dec. 3, 2015).

<sup>5</sup> ML#175456: *The Maryland Energy Administration’s FY 2015 Annual Reports for the CIF Programs* (“MEA FY2015 Report”) (Sept. 29, 2015); ML#178852: *Revised Next Generation Energy Efficiency Gains Annual Report* (“MEA FY2015 Revised Report”) (Dec. 2, 2015).

<sup>6</sup> ML#175459: *City of Baltimore’s Annual Report to the Public Service Commission for FY2015 Customer Investment Fund* (“Baltimore City’s FY2015 Report”).

<sup>7</sup> ML#175460: *DHCD 2015 Annual Customer Investment Fund Maryland Report* (“DHCD FY2015 Report”) (Sept. 29, 2015); ML#177567: *DHCD 2015 Annual Customer Investment Fund Errata* (“DHCD FY2015 Errata Report”) (Nov. 6, 2015).

<sup>8</sup> ML#175298: *CHAI Annual Report to the Maryland Public Service Commission* (“CHAI FY2015 Report”) (Sept. 25, 2015).

<sup>9</sup> 175455: *Baltimore County, Maryland Sustainable Dundalk Initiative Financial Year 2015 Report* (“Baltimore County – Dundalk FY2015 Report”) (Sept. 30, 2015).

<sup>10</sup> ML#176294: *Fuel Fund of Maryland’s CIF Annual Report* (“FFM FY2015 Report”) (Oct. 16, 2015).

<sup>11</sup> ML#178923: *OPC Comments on Case No. 9271 – Exelon Customer Investment Fund Annual Reports* (“OPC Comments”) (Dec. 1, 2015).

which OPC noted its support.<sup>12</sup> The CIF Recipients also assented to the modified disbursement schedule as it applied to their programs – albeit with the caveat that the Commission outline a process for requesting additional funding should the revised disbursement prove insufficient. We too concur with the revised fiscal year 2016 disbursement schedule proposed by Staff, and therefore direct the remaining disbursements for fiscal year 2016 to occur in accordance with Table 1, attached to this Order. As suggested by Staff, if a CIF Recipient experiences a dramatic increase in spending above forecasts and projected to be in excess of what is disbursed as a result of this Order during the remainder of this fiscal year, then the CIF Recipient, in consultation with Staff, should file a timely request for additional funding.<sup>13</sup>

In addition to a revised disbursement schedule for fiscal year 2016, Staff also recommended several programmatic modifications that span the CIF Recipients’ portfolios, all of which we adopt here. Specifically, Staff noted that the extended ramp-up phase of the approved CIF programs throughout fiscal year 2014 (which resulted in the revised disbursement schedules for fiscal years 2015 and 2016) justifies extending the CIF structure into a fourth fiscal year.<sup>14</sup> This proposed extension into fiscal year 2017 would provide us the opportunity to disburse previously withheld or reduced funding to the affected CIF Recipients, if their progress is deemed satisfactory.<sup>15</sup> Further, an extension into fiscal year 2017 is warranted given that we may choose to disburse additional CIF funding that was

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<sup>12</sup> *Id.* at 1.

<sup>13</sup> Staff Errata Report at 40, Appendix B.

<sup>14</sup> Staff Report at 7, 38.

<sup>15</sup> Both Staff and OPC expressed concern regarding the significant underspending to-date of previously-disbursed funds in DHCD’s two CIF programs. Staff Report at 6; OPC Comments at 2.

previously reserved for administrative purposes.<sup>16</sup> Therefore, we accept Staff's recommendation to formally direct the continuation of the CIF structure into fiscal year 2017.<sup>17</sup>

Additionally, Staff recommended that the CIF Work Group reconvene to discuss a variety of matters germane to all CIF programs, including the potential integration of some programs or program components into the BGE EmPOWER Maryland portfolio.<sup>18</sup> While OPC contends that it is premature to engage in such discussions at this time,<sup>19</sup> we disagree and find that to the extent Staff, BGE, or any other stakeholders wish to discuss the potential integration of CIF programs or components into the BGE EmPOWER portfolio, the CIF Work Group is directed to convene for purposes of facilitating these discussions. Given that any formal proposals to modify or expand existing EmPOWER programs would occur through our established EmPOWER semi-annual process, to which OPC is a party, we are confident that OPC can appropriately express any concerns that may arise during its participation in both the CIF Work Group process and the EmPOWER proceedings.

Staff further recommended that the CIF Work Group reconvene to discuss the evaluation, measurement, and verification (“EM&V”) process and how to best attribute CIF energy savings toward BGE’s EmPOWER Maryland goals.<sup>20</sup> In Order No. 86787, we directed BGE to await verification of the energy savings resulting from the CIF programs

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<sup>16</sup> See *supra* at 1, n.1.

<sup>17</sup> This does not constitute a decision regarding funding levels of individual CIF programs at this time. A disbursement schedule for fiscal year 2017 will be issued at a later date.

<sup>18</sup> Staff Report at 37.

<sup>19</sup> OPC Comments at 3.

<sup>20</sup> Staff Report at 37.

prior to recording the savings as part of its EmPOWER Maryland portfolio.<sup>21</sup> We further directed each CIF recipient to meet with Staff to review and receive training on the CIF reporting and EM&V process prior to receiving any fiscal year 2016 disbursement.<sup>22</sup> In accordance with this directive, Staff met with each CIF Recipient in advance of fiscal year 2015; following these trainings, “Staff felt confident that each of the programs was on track for accelerated performance and better utilization of CIF funds in FY15 and improved financial and EM&V reporting.”<sup>23</sup> However, Staff now concludes that questions remain regarding the reliability of the energy savings figures reported by the CIF Recipients in their respective fiscal year 2015 reports, leading Staff to recommend that the CIF Work Group reconvene to discuss next steps.<sup>24</sup> We concur with this recommendation, and direct the CIF Work Group to discuss the appropriate protocols moving forward. While OPC contends that “certain [CIF-derived] savings may not be able to be captured under EmPOWER” due to their non-recurring nature,<sup>25</sup> we are unpersuaded at this time by OPC’s argument, particularly given that the current EmPOWER methodology uses annualized first-year energy savings to measure energy efficiency goals.<sup>26</sup>

In addition to the aforementioned overarching recommendations, Staff also proposed several modifications pertaining to individual CIF programs. First, Staff recommended that we permit MEA to modify its original proposal for the Net Zero Schools Program, which

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<sup>21</sup> Order No. 86787 (Dec. 29, 2014) at 4.

<sup>22</sup> *Id.*

<sup>23</sup> Staff Report at 4.

<sup>24</sup> *Id.* at 7.

<sup>25</sup> OPC Comments at 3-4.

<sup>26</sup> *See* Order No. 87082 (July 16, 2015) at 23.

initially envisioned deploying approved CIF funds in three different school systems.<sup>27</sup> We concur with Staff that the size of the Baltimore City school district, as well as the lack of planned school construction in the near term, justifies a program modification that will allow MEA to work with two schools in the Baltimore City school district.<sup>28</sup> Therefore, we approve the modification to MEA's Net Zero Schools Program so that MEA may deploy previously-approved and disbursed funds to two otherwise eligible schools in the Baltimore City school district.

The second individual CIF program for which Staff recommended modifications is the revolving loan fund program administered by CHAI. We note that the CIF program as proposed by CHAI and as approved by us included a provision stating that CHAI would establish an energy home improvement loan fund to create a subsidy for 100 limited-income households at or below 80% of HUD area median income.<sup>29</sup> In Order No. 86787 we directed CHAI develop an intake process for limited-income applicants and to work with Staff and the EmPOWER Maryland Work Group to improve its overall EmPOWER Maryland communication strategy generally.<sup>30</sup> While CHAI has since implemented these additional strategies, Staff remains concerned by the limited number of low-to-moderate income grants processed by CHAI in fiscal year 2015.<sup>31</sup> Thus, Staff suggested that CHAI continue its efforts to increase marketing in their recently expanded region so as to increase the number

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<sup>27</sup> Staff Comments at 20.

<sup>28</sup> The third school participating in the MEA CIF-funded Net Zero School Program is in the Howard County school district and is scheduled to be completed in August 2017. *Id.*

<sup>29</sup> ML#140710: *Customer Investment Fund Proposal: Energy Home Improvement Loan Fund* (June 14, 2012), at 3.

<sup>30</sup> Order No. 86787 at 4.

<sup>31</sup> Staff Comments at 10.

of low-to-moderate income applicants for the CHAI program.<sup>32</sup> We concur with Staff's recommendation, and direct CHAI to significantly increase marketing in the expanded region as denoted by Staff in order to reach CHAI's original goal of processing grants for 100 limited-income households at or below 80% of HUD area median income.

Staff also recommended that CHAI continue its conversations with potential EM&V contractors in order to verify energy savings reported as part of its CIF program.<sup>33</sup> We agree with Staff's recommendation and note that CHAI may further benefit from discussions on this topic to be held within the CIF Work Group ordered herein. We also note that CHAI would benefit from additional discussions with our Staff and BGE pertaining to the technical requirements imposed for energy efficiency measures funded through EmPOWER. While the initial program proposal submitted by CHAI and approved by us did contemplate the use of CIF funds to encourage upgrades of HVAC systems and other Energy Star appliances,<sup>34</sup> the minimum SEER rating noted in CHAI's fiscal year 2015 report is below that required for a similar incentive offered as part of the current EmPOWER programs.<sup>35</sup> Therefore, we direct Staff to work with CHAI to ensure that grants for energy efficiency measures funded by CHAI's approved CIF program are consistent with the technical requirements for similar energy efficiency measures offered as part of BGE's EmPOWER Maryland programs.

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<sup>32</sup> *Id.* at 37.

<sup>33</sup> *Id.* at 12.

<sup>34</sup> ML#140710: *Customer Investment Fund Proposal: Energy Home Improvement Loan Fund* (June 14, 2012), at 2.

<sup>35</sup> See CHAI FY2015 Report at 2 (stating that the electric HVAC minimum is a SEER 14.5, EER 12). This is contrasted with the EmPOWER Maryland program offerings, which require a minimum 16 SEER equipment installation for incentive eligibility. See Order No. 86785 (Dec. 23, 2014) at 13.

Lastly, both Staff and OPC recommended that we deny DHCD’s request to double the health and safety spending cap from \$15,000 to \$30,000.<sup>36</sup> In the alternative, Staff recommended that the Commission could replace the current cap structure with a soft cap of \$20,000, with the ability to spend up to \$30,000 on a case-by-case basis.<sup>37</sup> OPC noted its concern that while the CIF funds may be more appropriately used to address additional health and safety concerns (as opposed to EmPOWER ratepayer funds), a tension remains with regard to maximizing the number of households that can take advantage of this funding opportunity.<sup>38</sup> Further, OPC opined that DHCD should be required to implement stricter quality control and assurance standards, such as those adopted in the EmPOWER Limited-Income Energy Efficiency Program (“LIEEP”), if the Commission adopts the soft cap structure proposed by Staff.<sup>39</sup> While we adopt the soft cap structure as proposed by Staff, we concur with OPC and therefore direct Staff to work with DHCD to ensure that the CIF funds are being deployed in a manner consistent and compatible with the protocols established for the EmPOWER limited-income programs.<sup>40</sup>

**IT IS, THEREFORE,** this 22nd day of December in the year Two Thousand Fifteen,  
by the Public Service Commission of Maryland,

**ORDERED:** (1) That the second semi-annual disbursement of funds for fiscal year

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<sup>36</sup> Staff Comments at 37; OPC Comments at 4.

<sup>37</sup> Staff Comments at 37.

<sup>38</sup> OPC Comments at 4.

<sup>39</sup> *Id.*

<sup>40</sup> For example, while the health and safety spending limits constitute different amounts in the CIF and EmPOWER programs, the guidelines for eligible measures should remain consistent. *See* Order No. 86785 (Dec. 23, 2014) at 22, n.58.



2016 shall be distributed during the beginning of the third quarter of fiscal year 2016 in the amounts specified in Table 1;

(2) That Staff is directed to convene the CIF Work Group for purposes of discussing the possible integration of CIF programs or program components into the utilities' EmPOWER Maryland portfolios, and discussing the EM&V process and how to attribute CIF energy savings toward BGE's EmPOWER Maryland goals;

(3) That the requested modification to MEA's Net Zero Schools Program so that it may deploy previously-approved and disbursed CIF funds to two otherwise eligible schools in the Baltimore City school district is hereby approved;

(4) That CHAI is directed to significantly increase marketing in the expanded region as noted by Staff in order to reach CHAI's original goal of processing grants for 100 limited-income households at or below 80% of HUD area median income;

(5) That CHAI is directed to continue conversations with potential EM&V contractors for purposes of verifying energy savings generated by its CIF program;

(6) That Staff is directed to work with CHAI to ensure that grants for energy efficiency measures funded by CHAI's approved CIF program are consistent with the technical requirements for energy efficiency measures offered as part of BGE's EmPOWER Maryland programs;

(7) That DHCD's request to modify its CIF program so as to double the health and safety spending cap from \$15,000 to \$30,000 is denied;

(8) That DHCD is directed to modify its CIF program so that the health and safety spending category has a soft cap of up to \$20,000, with the ability to increase health and safety spending up to a \$30,000 hard cap on a case-by-case basis; and

(9) That Staff is directed to work with DHCD to ensure that the CIF funds are being deployed in a manner consistent and compatible with the protocols established for the EmPOWER Maryland limited-income programs.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Lawrence Brenner

/s/ Anne E. Hoskins

/s/ Jeannette M. Mills  
Commissioners

**Table 1: REVISED Fiscal Year 2016 Quarter 3 / Quarter 4 CIF Disbursement Schedule**

Party	Program Name	FY16 Q1/Q2 Disbursement - Order No. 87015	Revised FY16 Q3/Q4 Disbursement	Revised Total FY16 Disbursement
DHCD	Improved Efficiency for Affordable Multifamily Housing	\$1,200,000.00	\$0.00	\$1,200,000.00
	Targeted and Enhanced Weatherization	\$5,000,000.00	\$0.00	\$5,000,000.00
MEA	Net Zero Energy Schools	\$2,308,008.00	\$0.00	\$2,308,008.00
	Next Generation EE Gains for the Industrial Sector	\$500,524.00	\$471,674.00	\$972,198.00
	Small Business Energy Advances (admin from awarded balance)	\$0.00	\$0.00	\$0.00
Baltimore City	Baltimore Energy Challenge	\$610,209.00	\$0.00	\$610,209.00
	Cogeneration	\$1,196,555.00	\$0.00	\$1,196,555.00
	Case Management	\$531,436.00	\$183,898.03	\$715,334.03
	Energy Assistance	\$252,300.00	\$0.00	\$252,300.00
	Energy Efficiency	\$1,577,813.00	\$0.00	\$1,577,813.00
	Energy Efficiency Plus	\$3,594,260.00	\$3,594,260.00	\$7,188,520.00
	Pooled EM&V for CM; EA; EE; and EE+ Programs	\$102,289.00	\$102,289.00	\$204,578.00
	Retrofits & Upgrades	\$2,000,000.00	\$0.00	\$2,000,000.00
	Urban Heat Island Mitigation	\$516,890.00	\$0.00	\$516,890.00
Baltimore County	Sustainable Dundalk Initiative	\$0.00	\$0.00	\$0.00
CHAI	Energy Home Improvement Loan Fund	\$333,500.00	\$108,167.44	\$441,667.44
Fuel Fund of Maryland	Program Expansion	\$1,753,973.00	\$900,266.00	\$2,654,239.00
		<b>\$21,477,757.00</b>	<b>\$5,360,554.47</b>	<b>\$26,838,311.47</b>