

**ORDER NO. 87944**

IN THE MATTER OF THE APPLICATION OF POTOMAC ELECTRIC POWER COMPANY FOR ADJUSTMENTS TO ITS RETAIL RATES FOR THE DISTRIBUTION OF ELECTRIC ENERGY  <hr style="width: 35%; margin-left: 0;"/>	* * * * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND  <hr style="width: 20%; margin-left: auto; margin-right: auto;"/> CASE NO. 9385 <hr style="width: 20%; margin-left: auto; margin-right: auto;"/>
---	--	--

**Issue Date: December 16, 2016**

**ORDER ON PETITION FOR REHEARING**

On September 9, 2016, Potomac Electric Power Company (“Pepco” or “Company”) filed a Petition for Rehearing (“Pepco Petition”) of the Maryland Public Service Commission (“Commission”) Order No. 87710 issued on August 10, 2016 in the above captioned proceeding. Pepco’s Petition requested that the Commission modify its decision and allow the Company to earn both a debt and equity return on the undepreciated net book value of its retired legacy meters; or in the alternative, allow the Company to amortize the undepreciated value of the legacy meters over a period of 10 years rather 15 years. The Company filed this petition pursuant to §3-114 of the Public Utilities Article, *Annotated Code of Maryland* (“PUA”) and Code of Maryland Regulations (“COMAR”) 20.07.02.08. The Commission hereby denies rehearing on the issue of disallowing legacy meters return on the undepreciated net book value, and modifies its decision pertaining to the 15-year amortization period.

## I. BACKGROUND

On August 10, 2016, the Commission issued Order No. 87710 which addressed Pepco's Appeal requesting that the Commission reject the Proposed Order of the Public Utility Law Judge ("PULJ") ("Proposed Order") that directed "Pepco's legacy meter capital costs of \$84,670,768 to remain in a regulatory asset and be amortized over a 15-year period with no opportunity to earn a return *on* the capital costs."<sup>1</sup> (*emphasis added*) The Proposed Order also ruled that the amortization period would start when the Proposed Order becomes a final Order of the Commission.<sup>2</sup> The Commission's Order No. 87710 upheld the Proposed Order that granted Pepco a return "of" the capital costs related to the legacy meters but disallowed Pepco a return "on" the legacy meters. Additionally, Commission Order No. 87710 affirmed the 15-year amortization of the legacy meters.

On September 9, 2016, Pepco filed the Petition of Rehearing requesting that the Commission modify its August 10, 2016 Order No. 87710 "to allow Pepco a return on legacy meters so as to (1) provide consistency with the prior Commission orders on which Pepco relied in moving forward with deploying advanced metering infrastructure (AMI) and (2) reflect accurately the actual circumstances of AMI implementation, which were that the Commission both directed Pepco to move ahead with development of AMI and required that the wholesale retirement of legacy meters was to be part of utilities' AMI programs."<sup>3</sup> Pepco's Petition indicated that, even if the Commission did not provide a full return on Pepco's investment in legacy meters, it should as an alternative

---

<sup>1</sup> Order No. 87710 at 2.

<sup>2</sup> *Id.*

<sup>3</sup> *Petition of Potomac Electric Power Company for Rehearing* filed in Case No. 9385, September 9, 2016 ("Pepco's Petition") at 2.

allow recovery of a return equal to Pepco's cost of debt.<sup>4</sup> Finally, Pepco argued that should the Commission decide to not provide a return on equity nor a return on debt for the legacy meters, the Commission should at least reduce the legacy meters' amortization period from fifteen (15) years to ten (10) years which would minimize Pepco's loss and be consistent with the treatment the Commission provided another utility.<sup>5</sup>

## II. DISCUSSION AND FINDINGS

In its Petition for Rehearing, Pepco sets forth several reasons why the Commission should modify its decision in Order No. 87710. The Company argues that the Commission erred when it disallowed the Company a return on the unamortized balance of the retired legacy meter capital costs. Specifically, the Company asserts that disallowing it cost recovery of a return "on" legacy meters is confiscatory and misapplies the "used and useful" ratemaking principle. To the contrary, we find that it is the Company that misapplies the ratemaking principle when it claims that "Pepco is entitled to realize a **full** return on its investments in 'property used and useful in providing service to the public.'"<sup>6</sup> (emphasis added) Pepco's claim is in fact more expansive than the actual language defined in the statute. Under PUA §4-102 (b), the Commission is granted the authority to set a "just and reasonable rate of a public service company, as a maximum rate, minimum rate, or both." The statute further defines that a "just and reasonable rate" means a rate that:

- (1) does not violate any provision of this article;
- (2) fully considers and is consistent with the public good; and
- (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation

---

<sup>4</sup> Pepco's Petition at 2.

<sup>5</sup> *Id.* at 2.

<sup>6</sup> Pepco Petition at 15.

and other necessary and proper expenses and reserves, a *reasonable return* on the fair value of the public service company's property used and useful in providing service to the public.

PUA §4-101 (italics added)

This provision describes the factors the Commission considers in setting just and reasonable rates. The statute does not require that a public service company receive a "full return"; rather, the statute allows the Commission flexibility in determining "a *reasonable return* on the fair value of the public service company's property used and useful in providing service to the public." The Company is correct in stating that no party to the proceeding disputed whether the legacy meters were once used and useful in providing service to ratepayers or that the Company's investment in the legacy meters was imprudent at the time it was made. Nonetheless, the issue before the Commission for ratemaking purposes is: what is the *appropriate* cost recovery for now retired legacy meters.

In Order No. 87710, the Commission found that the legacy meters were no longer used and useful for ratemaking purposes once they had been retired and placed into a regulatory asset. However, we believe, as found in the Proposed Order, that "it would not be just and reasonable to deny any and all recovery "of" legacy meter costs as the meters were once in place and used and useful."<sup>7</sup> The PULJ found, and Order No. 87710 upheld, that the actual unrecovered costs of the meters without any return shall remain in a regulatory asset and be amortized over a 15 year period but Pepco shall not recover a return on the cost of the legacy meters.<sup>8</sup>

---

<sup>7</sup> Proposed Order of Public Utility Law Judge, *In the Matter of the Application of Potomac Electric Power Company for Approval of Changes in Its Depreciation Case*, Case No. 9385 (January 13, 2016) ("Proposed Order") at 23.

<sup>8</sup> *Id.*

For consistency with the Commission’s decision in Baltimore Gas and Electric (“BGE”) Company’s Case No. 9406, and maintained in Pepco Case No. 9418, we grant the Petition for Rehearing in part and modify our initial Order No. 87710 to reduce the amortization period of the legacy meter regulatory asset from 15 years to 10 years.

However, regarding the issue of allowing a return on legacy meters we find that the Company’s petition does not meet the rehearing criteria set forth in COMAR 20.07.02.08(C) and (D)(2)<sup>9</sup> and fails to allege any new facts or circumstances that have arisen after the order or any new consequences resulting from compliance with the order which justify reversal or modification. Therefore, we do not alter our finding to disallow a return on the capital costs of the legacy meters. We note that this finding is in keeping with our decision in BGE Case No. 9406 which also disallowed a return on legacy meters that were retired as part of BGE’s smart grid initiative.<sup>10</sup>

In BGE Case No. 9406, the Commission found that retired legacy meter assets “are in a different category from other assets in that the legacy meters were retired all at once while they still had useful life.”<sup>11</sup> Additionally, the Commission found that allowing the sister utility (BGE) to receive a return of and *not a return on* the unamortized balance of legacy meter was “an equitable split between ratepayers and shareholders”<sup>12</sup> The Commission maintained this position in its Order on Petitions for Rehearing the BGE Case No. 9406 (Order No. 87695). In that Order, citing the Kansas

---

<sup>9</sup> “A petition seeking to reverse or modify a decision, order or requirement of the Commission shall: (1) fully set forth the facts, circumstances, and consequences relied upon; and (2) allege: “(a) The facts and circumstances which have arisen after the hearing or order which justify the reversal or modification; or (b) The consequences resulting from compliance with the decision, order, or requirement which justify or entitle the applicant to the reversal or modification.” See COMAR 20.07.02.08(C) and (D)(2).

<sup>10</sup> Order No. 87591 at 66.

<sup>11</sup> *Id.*

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

Corporation Commission's decision on a similar matter, the Commission concluded that it is inappropriate to allow a full return on both AMI and legacy meters.<sup>13</sup> Accordingly, the Commission finds that the shortened amortization period that it authorized for the Company in Case No. 9418 does provide some return *on* Pepco's legacy meter investment that it otherwise would not have had.

**IT IS THEREFORE**, this 16th day of December, in the year of Two Thousand Sixteen, by the Public Service Commission of Maryland,

ORDERED (1) That the Petition for Rehearing filed by Potomac Electric Power Company, is hereby granted in part and denied in part;

(2) That Potomac Electric Power Company is hereby authorized pursuant §4-204 of the Public Utilities Article, Annotated Code of Maryland, to file tariffs that reflect a 10 year amortization period to be applied to the retired legacy meters; and

(3) That Potomac Electric Power Company request to modify Order No. 87710 and allow the Company to earn both a debt and equity return on the undepreciated net book value of its retired legacy meters is denied.

By Direction of the Commission

*/s/ David J. Collins*

David J. Collins  
Executive Secretary

---

<sup>13</sup> See Order on Petitions for Rehearing the BGE Case No. 9406 (Order No. 87695) at n. 20; *In Matter of the Application of Kan. City Power & Light Co. to Make Certain changes in its Charges for Elec. Serv.*, 324 P.U.R. 4<sup>th</sup> 173 (2015); 2015 WL 5317635. In its Order on Reconsideration in that case, the Kansas Corporation Commission also noted that "by allowing a ten-year amortization, the Commission effectively gives some return on investment because the approved lives of the AMR meters are longer than the amortization period. In other words, shortening the time period in which [the utility] gets the return on investment serves as a return on investment."