

**ORDER NO. 88159**

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 \*  
\_\_\_\_\_ \*

BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND  
\_\_\_\_\_  
CASE NO. 9156  
\_\_\_\_\_

**Issue Date: April 27, 2017**

On February 24, 2017, Delmarva Power & Light Company (“Delmarva”), the National Consumer Law Center (“NCLC”), the National Housing Trust (“NHT”), the Housing Association of Nonprofit Developers, and the Maryland Affordable Housing Coalition (collectively, the “Joint Petitioners”) filed a petition for rehearing and request for partial stay of Order No. 88007 issued by the Public Service Commission of Maryland (“Commission”) on February 2, 2017 in the above-captioned proceeding.<sup>1</sup> By Letter Order on March 2, 2017, we granted the request for partial stay of Order No. 88007 – specific to ordering paragraph 28 – pending our ruling on the Joint Petitioners’ request for rehearing.<sup>2</sup> Upon consideration and review of the underlying record, we deny the Joint Petitioners’ request for rehearing and affirm our prior decision in Order No. 88007 for the reasons outlined herein.

In the February 24 request for rehearing, the Joint Petitioners ask that we reconsider our directive to Delmarva to re-file its 2017 commercial and industrial (“C&I”) EmPOWER tariff to reflect the incremental \$1,036,038 customer investment

<sup>1</sup> ML#213087: *Joint Petition for Rehearing and Request for Partial Stay* (“Joint Petitioners’ Request”) (Feb. 24, 2017).

<sup>2</sup> ML#213087: *Letter Order regarding Case No. 9156 – Joint Petition for Rehearing and Request for Partial Stay of Order No. 88007* (March 2, 2017).

fund credit apportioned to its C&I customers in support of the multifamily energy efficiency program budget increases authorized in Order No. 87575.<sup>3</sup> In support of the request, the Joint Petitioners highlight language from the Exelon – PHI Merger Condition 3(C), which states that Delmarva “*shall* direct at least 20% of the funds into programs dedicated to energy efficiency in affordable multifamily housing.” (emphasis added by Joint Petitioners)<sup>4</sup> According to the Joint Petitioners, Delmarva’s C&I multifamily programs are not dedicated to providing energy efficiency investments in affordable multifamily housing, and thus, the Commission’s directive to offset budget increases to those programs is in violation of Merger Condition 3(C).<sup>5</sup> Instead, the Joint Petitioners renew their request that the Commission authorize use of the applicable merger monies to fund the parallel Multifamily Energy Efficiency and Housing Affordability (“MEEHA”) Program described in a March 1, 2016 filing made by Delmarva.<sup>6</sup>

While we appreciate the sentiment expressed by the Joint Petitioners in seeking to ensure that customer investment funds are expended in a manner consistent with Merger Condition 3(C), we conclude that the directive outlined in Order No. 88007 accomplishes this already.<sup>7</sup> The comprehensive energy efficiency incentives available through Delmarva’s Multifamily Prescriptive and Multifamily Quick Home Energy Check-up

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<sup>3</sup> Joint Petitioners’ Request at 3.

<sup>4</sup> *Id.* at 3.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Id.* The March 1, 2016 filing to which Joint Petitioners refer constitutes a proposal to add a parallel program to the MEEHA Program implemented by the Maryland Department of Housing and Community Development (“DHCD”). The parallel offering would provide DHCD with the flexibility to remediate health and safety concerns beyond the cap placed on such investments made with EmPOWER funds, as well as to upgrade gas appliances and water heaters. *See* ML#185186: *Case No. 9361 Condition 3 C* (March 1, 2016) at 2.

<sup>7</sup> We see no conflict in our directive with the plain language of Merger Condition 3(C), given that the funds will be used to offset monies spent on energy efficiency upgrades targeted to increase the affordability of multifamily housing. Neither Condition 3(C), nor the Exelon – PHI merger order as a whole, adopts any definition of “affordable multifamily housing” that would otherwise serve as a restriction on our decision to allocate the funds at issue. *See* Order No. 86990 (May 15, 2015).

Programs increase the affordability of energy efficiency upgrades for residents of multifamily properties, and reduce energy and water costs, improve tenant comfort, and reduce maintenance costs for the entire multifamily building. In so doing, the multifamily housing structures become more affordable for all. We note, however, to the extent that the Joint Petitioners desire to proactively and prospectively impose income eligibility restrictions on certain portions of Delmarva's remaining 2017 budget for its multifamily energy efficiency programs, we authorize Delmarva to do so with respect to its expenditure of up to the \$1,036,038 allotted in Order No. 88007.<sup>8</sup>

Lastly, we affirm our denial of the Joint Petitioners' request to establish a parallel offering to the MEEHA Program as described in the March 1, 2016 filing.<sup>9</sup> Since the submission of the March 1, 2016 proposal, we have already acted to address one of the shortcomings identified in the filing – the ability of master-metered buildings to participate in multifamily energy efficiency program offerings in the Delmarva service territory.<sup>10</sup> Further, we have opined repeatedly on the other two justifications for the parallel program discussed in the March 1, 2016 proposal; specifically, by emphasizing the requirement that DHCD attempts at a minimum good faith efforts to leverage “outside funds and resources in conjunction with the EmPOWER dollars so that the leveraged additional resources could fulfill the comprehensive needs of the limited-income sector beyond the scope for which the EmPOWER funds are earmarked.”<sup>11</sup> Further, we disagree strongly with the Joint Petitioners' assertion that Order No. 88007

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<sup>8</sup> Any such income eligibility restrictions should be disclosed publicly on Delmarva's website and made available in an informational filing to our Technical Staff within 15 days of reaching any such decision.

<sup>9</sup> See Order No. 88007 (Feb. 2, 2017) at 21.

<sup>10</sup> See Order No. 87575 (May 26, 2016) at 24-25.

<sup>11</sup> Order No. 88007 at 13.

“is silent as to [*sic*] the remaining balance of \$1.3 million,”<sup>12</sup> and thus find no need to reconsider our previous denial of the Joint Petitioners’ March 1, 2016 proposal.<sup>13</sup>

**IT IS THEREFORE**, this 27<sup>th</sup> day of April, in the year Two Thousand Seventeen, by the Public Service Commission of Maryland,

**ORDERED:** That the Joint Petitioners’ Request for Rehearing is hereby DENIED and that Order No. 88007 is hereby AFFIRMED, subject to the modification discussed herein.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Michael T. Richard

/s/ Anthony J. O’Donnell  
Commissioners

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<sup>12</sup> Joint Petitioners’ Request at 4, note 13.

<sup>13</sup> See Order No. 88007 at 22, stating, “Delmarva is directed to consider first the aforementioned available offset credits before seeking a budget increase for the applicable programs during the remainder of this program cycle.” Thus, should Delmarva consider an increase to its multifamily energy efficiency programs’ budgets during the remainder of this program cycle, the remaining merger funds of \$1.3 million must be considered first as a potential offset. As discussed in this Order, the Joint Petitioners may voluntarily impose income eligibility restrictions on the use of the \$1.3 million in funding should it be approved as an offset to a multifamily energy efficiency program budget increase request submitted prospectively by Delmarva.