

ORDER NO. 88262

IN THE MATTER OF THE *
COMMISSION’S INVESTIGATION INTO *
THE POTOMAC EDISON COMPANY’S *
METER READING FREQUENCY, *
ESTIMATION OF BILLS, AND *
COMPLIANCE WITH TARIFF *
_____ *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9319

Issue Date: June 19, 2017

The Potomac Edison Company (“Potomac Edison” or “PE” or the “Company”) and the Office of People’s Counsel (“OPC”) both noted appeals pursuant to Section 3-113(d)(2) of the Public Utilities Article, *Annotated Code of Maryland* (“PUA”) of the Proposed Order issued by the Maryland Public Service Commission’s (“Commission”) Public Utility Law Judge Division on May 5, 2016 (“Proposed Order”). The Commission hereby issues this final Order in accordance with PUA §3-113(d)(3), replacing the Proposed Order in its entirety.

I. BACKGROUND

A. Procedural History

This matter originated as separate complaints filed by Potomac Edison customers.¹ On April 9, 2013, the Commission consolidated those complaints into the current case, initiating an investigation “into PE’s meter reading frequency, estimation of

¹ Mr. Richard G. Tufts filed a Formal Complaint on May 4, 2012 under Maillog No. 139109. The Sugarloaf Conservancy filed a Formal Complaint against PE on May 21, 2012 under Maillog No. 139432.

bills, and compliance with its Tariff, and delegate[d] this matter to the Public Utility Law Judge Division (“PULJD”) for appropriate proceedings.”² The Commission instructed the PULJD to direct PE “to produce documents sufficient for the PULJD to assess whether PE is, and has been, complying with its bimonthly meter reading obligation as prescribed in its Tariff,” and to “determine the appropriate disposition of the Tufts and Sugarloaf Conservancy Complaints, including appropriate remedial actions, if applicable.”³

Several Petitions to Intervene were filed by various Potomac Edison customers. Each Petition to Intervene was granted, accepting the filers as Parties in this proceeding.

On June 24, 2013, the following issues list, as agreed upon by the parties, was accepted:

1. Did Potomac Edison (“PE”) violate its tariff or any applicable laws or regulations as a result of the frequency of its meter reading, and if so, which provision of its tariff or laws or regulations did it violate?
2. What steps has PE taken since May 18, 2012--the date on which the Commission notified PE of a Formal Complaint from Mr. Richard Tufts, concerning the frequency of PE’s meter reading--to ensure that its customers’ meters are read in accordance with its tariff and with all applicable laws and regulations?
3. What additional steps, if any, should PE be required to take to further ensure that its customers’ meters are read in accordance with its tariff and with all applicable laws and regulations? Should PE’s performance be monitored going forward, and if so, how?
4. What is/are the method(s) used by PE to estimate its customers’ bills to ensure that they are reasonable, accurate and utilize industry best practices? How does the meter reading process and associated cost compare to those used by other power companies?
5. If PE failed to perform actual meter readings on a timely basis did this failure impose burdens on customers, including(a) service terminations that occurred because of overcharges on estimated

² Order No. 85485, p. 2.

³ *Id.*

bills; (b) service terminations that occurred because of true-up adjustments to reconcile prior estimated bills; or (c) costs associated with the time value of overcharges on estimated bills?

6. If PE failed to perform actual meter readings on a timely basis, what steps has PE taken to remedy negative impacts (if any) on PE's customers resulting from PE's failures to comply with meter-reading provisions of its tariff and/or any applicable laws or regulations?

7. What customer feedback mechanism does PE have to appropriately address customers' concerns about estimated bills or meter reading, and are PE employees properly trained to address these concerns?

8. If PE failed to comply with the meter-reading provisions of its tariff and/or any applicable laws or regulations, what changes, if any, should be made to PE's tariff?

9. If PE failed to perform actual meter readings on a timely basis, what additional actions, if any, should the Commission take?

The Parties attempted resolution through mediation but no agreement was reached. On June 15, 2015, pursuant to the procedural schedule, Potomac Edison filed the direct testimony of Charity A. Emert, Manager-Meter Reading, and Gary W. Grant Jr., Director, Customer Contact Centers for FirstEnergy Service Corporation ("FirstEnergy"). On July 22, 2015, Staff filed the Direct Testimony of Mikhail Ratushny, Public Service Commission Engineer. On that same date, OPC filed the reply testimony of Michael J. Majoros, President of Snively King Majoros and Associates, Inc., and the reply testimony of Nancy Brockway, Esq. Principal, NBrockway & Associates, and exhibits thereto. On September 18, 2015, Potomac Edison filed the rebuttal testimony of Charity A. Emert, Gary W. Grant Jr., James W. Painter, Director Operations Support of PE, and of Kevin G. Wise, Director, Rates and Regulatory Affairs for Maryland and West Virginia of FirstEnergy.

Hearings were held on October 14-16, 2015 and on December 11, 2015. Post hearing briefs and reply briefs were filed in January and February, 2016. On April 1, 2016, an incomplete Proposed Order was inadvertently filed in this case. By Order No. 87470, issued on April 5, 2016, that inadvertently filed Proposed Order was reversed and a completed, corrected Proposed Order was directed to be issued, with a new 30-day appeal period.

On May 5, 2016, the PULJD issued the Proposed Order which found that Potomac Edison had violated its tariff and applicable regulations in 2011 – 2012 in failing to read residential customer meters at least bi-monthly, directed the Company to modify its tariff to provide for monthly meter reads and implement a number of remedial measures, and imposed a civil penalty of \$25,000. Potomac Edison and OPC both filed timely Notices of Appeal on June 6, 2016. PE also requested an extension of the page limit which was granted. On June 16, 2016, PE and OPC filed their respective Memoranda on Appeal, and on July 6, 2016, PE, OPC, and Staff filed their respective Reply Memoranda on Appeal.

B. Positions of the Parties on Appeal

1. Potomac Edison's Position on Appeal

Potomac Edison, in its Memorandum on Appeal, asserts that the Proposed Order is in error. Potomac Edison objects to the finding that it was in violation of its tariff, objects to the issuance of a civil penalty, and objects to the requirement that it provide for monthly readings. Potomac Edison seeks an Order from the Commission rejecting the Proposed Order in its entirety and dismissal of this proceeding.

Potomac Edison argues that the finding of a violation on the part of Potomac Edison is in error because there is no regulatory standard or regulatory requirement that was violated. Potomac Edison argues further that the assessment of a civil penalty is in error because it (1) was levied in response to supposed “backtracking” by Potomac Edison from “accepting responsibility” for its 2011 and 2012 read rates, (2) failed to consider the statutory criteria applicable to whether a civil penalty is appropriate, and (3) was levied despite the absence of any violation of any standard. Potomac Edison alleges that by levying a penalty for “backtracking,” the Proposed Order unlawfully punishes Potomac Edison for defending itself against allegations of violations in a contested case process. Potomac Edison asserts that it took responsibility, remedied the problems, and achieved better-than-ever performance.

Potomac Edison contends that the Proposed Order’s changes to its meter reading practices are in error because the changes are purported to be remedial measures, but the Company long ago remedied any meter reading deficiencies on its own initiative.

2. OPC’s Position on Appeal

OPC’s position on appeal is that the Commission should reverse the Proposed Order’s finding that Potomac Edison’s tariff must be amended to require monthly meter reading. OPC argues that a monthly meter read is not a necessary or appropriate remedy to address PE’s meter read failures in prior years, and that there is no evidence in the record that a monthly meter reading schedule, as opposed to a bi-monthly schedule, would have prevented or improved PE’s deficient meter reading performance in 2011 and 2012. OPC also takes issue with the reversal of the inadvertent first proposed order. Lastly, OPC states that there is insufficient evidence of the rate impact of the switch to

monthly meter reading in the record to determine whether a transition to monthly meter reading is an appropriate remedial action.

3. Staff's Position on the Appeals of Potomac Edison and OPC

Staff requests that both appeals be denied. Staff argues that, contrary to OPC's position, evidence was taken on the issue of whether monthly meter reads was advisable for PE. Staff maintains that the final Proposed Order contains the clear finding that Potomac Edison has had substandard meter reading performance, that the meter reading rate of PE fell below an acceptable level of reading for the years 2011-2012, and that PE was in violation of its tariff. Staff contends that the civil penalty is warranted under the four prong test proposed by PE in its Memorandum on Appeal.

Staff responded to OPC's complaint about the reversal of the first proposed order. Staff notes that there is no specific provision in the Public Utilities Article or in the Code of Maryland Regulations ("COMAR") that outlines a procedure for the Public Utility Law Judge Division to use should there be a need to withdraw, vacate, or reverse, or otherwise remove an order that was issued in error. Given that Public Utility Law Judges are, pursuant to PUA §2-108(d)(5)(ii), a separate organizational unit reporting directly to the Commission, an order must be issued by the Executive Secretary on behalf of the Commission in order to effectuate a reversal of a proposed order issued in error.

II. DISCUSSION AND FINDINGS

A. Issue No. 1: Did Potomac Edison ("PE") violate its tariff or any applicable laws or regulations as a result of the frequency of its meter reading, and if so, which provision of its tariff or laws or regulations did it violate?

COMAR 20.50.05.05 states that meters shall be read at approximate monthly intervals, unless otherwise authorized by the Commission. Section 4-12.10(b) of Potomac Edison's Tariff provides:

(b) Where Service is rendered under Rate Schedule provisions which do not require Monthly demand measurements [i.e., residential] and when the Customer selects the Company to provide billing services, meters may be read and bills rendered either Monthly, or bimonthly at the Company's option. When meters are read at bimonthly intervals, bills for the initial month of the interval may be estimated...The bill for the final months of the interval will be calculated from the metered use during the interval corrected for the amount of estimated use previously billed.

Thus, the Commission has authorized Potomac Edison to read its customers' meters either monthly or bimonthly.

Potomac Edison has chosen to utilize a bimonthly meter reading schedule.⁴ The facts demonstrate that in many instances Potomac Edison did not perform even bi-monthly meter reads, and that the meter reading rate of Potomac Edison fell below an acceptable level for the years 2011-2012.⁵ From July 2011 through December 2012, Potomac Edison did not once achieve a 90% monthly read rate.⁶ During those 18 months, the monthly read rate was below 70% seven times, and was below 80% in six other months.⁷ Potomac Edison does not dispute the basic facts regarding its meter read rates in the 2011 - 2012 time period.⁸

⁴ PE Ex. 3, Direct Testimony of Charity A. Emert ("Emert Direct"), p. 3.

⁵ Direct Testimony of Mikhail Ratushny ("Ratushny Direct"), p. 3-4. See also, Reply Testimony of Nancy Brockway ("Brockway Testimony") at attached PE Response to Staff DR IX-8, Attachment A (p. 251 of 304).

⁶ Brockway Testimony at attached PE Response to Staff DR IX-8, Attachment A (p. 251 of 304).

⁷ *Id.*

⁸ Memorandum on Appeal of the Potomac Edison Company, p. 27.

Potomac Edison's customers were scheduled to either receive actual readings in odd numbered months and estimated readings in even numbered months, or vice versa.⁹ However, when Potomac Edison missed an actual read, it did not deviate from its bi-monthly meter read schedule.¹⁰ Thus, a customer with a missed read would have to wait another two months until he/she was even scheduled again for an actual read. Therefore, one missed read would automatically result in a customer going four months without an actual read, resulting in three consecutive months of estimated readings.

We find that when Potomac Edison failed to perform monthly or bi-monthly meter reads, Potomac Edison violated its tariff, as well as Commission Order No. 57101 (and subsequent Commission Orders) authorizing the tariff provision for either monthly or bi-monthly meter reads. Consecutive estimated meter reads were not authorized; the Commission never authorized Potomac Edison to perform actual meters reads any less frequently than approximately every other month. We also find that Potomac Edison's failure to comply with the tariff language results in a violation of COMAR 20.50.05.05.

Potomac Edison stated that its inability to adhere to its tariff was due at least in part to shifting personnel from meter reading duties to other duties, so that Potomac Edison could, *e.g.*, restore service in times of severe weather.¹¹ Thus, Potomac Edison's failings were due to an inadequate level of staffing and a failure to have adequate contingency plans in place when Potomac Edison faced unusual weather events. COMAR 20.50.02.01, entitled Good Engineering Practice, provides:

⁹ Brockway Testimony at attached PE Response to OPC DR III-1 (p. 178-179 of 304).

¹⁰ *Id.*

¹¹ Emert Direct, p. 6-7.

The electric plant of the utility shall be constructed, installed, maintained, and operated in accordance with accepted good engineering practice in the electric industry to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

Because Potomac Edison was required to use good engineering practices to ensure, among other things, continuity of service, it cannot be said to have used good engineering practices if it was unable to do so unless it shifted personnel in a way that violated its tariff. We find that Potomac Edison's poor pre-storm planning, which led to its poor meter reading performance, was therefore in violation of COMAR 20.50.02.01.

COMAR 20.50.04.03A.(9) provides that the bill forms shall show "[A] distinct marking to identify an estimated bill." Potomac Edison's bill format had two obscure notations that the bill was based upon an estimated read.¹² We further find that Potomac Edison's bill forms therefore were in violation of COMAR 20.50.04.03A.(9) because they did not show a distinct marking to identify estimated bills.

B. Issue No. 2: What steps has PE taken since May 18, 2012--the date on which the Commission notified PE of a Formal Complaint from Mr. Richard Tufts, concerning the frequency of PE's meter reading--to ensure that its customers' meters are read in accordance with its tariff and with all applicable laws and regulations?

In a letter submitted to the Commission in response to the complaints that gave rise to this proceeding, Potomac Edison, through its counsel, outlined various steps it had taken to address the issues it knew existed.¹³ Subsequent to the closing of the FirstEnergy-Allegheny merger, Potomac Edison began integrating its computer systems

¹² Brockway Testimony, p. 32-33.

¹³ See OPC Ex. 4, Letter from Jeffrey P. Trout, Senior Corporate Counsel, to David J. Collins, Executive Secretary of the Commission dated July 6, 2012 ("Trout Letter").

into those of FirstEnergy.¹⁴ Though this integration had some negative impacts on Potomac Edison's meter reading, the new computer system has potential benefits including better tools for tracking meter reading productivity.¹⁵

Potomac Edison undertook efforts to add additional meter readers.¹⁶ The Company has made changes to its meter reading process including organizational changes, monitoring changes, and other practical adjustments.¹⁷

C. Issue No. 3: What additional steps, if any, should PE be required to take to further ensure that its customers' meters are read in accordance with its tariff and with all applicable laws and regulations? Should PE's performance be monitored going forward, and if so, how?

Upon review of the record in this proceeding, we will direct some of the safeguards for the future recommended by OPC to monitor Potomac Edison's performance and processes that we believe will be useful in addition to the measures that Potomac Edison has already taken.

We require Potomac Edison to file a monthly report for 24 months following this final Order, of the total number of and the percentage of actual reads that were not done but instead had an estimated read for billing purposes. This will ensure that the Company continues to comply with the applicable provisions of its tariff and with good engineering practices.

We require Potomac Edison to offer a payment plan, of up to twelve months in duration, to any customers affected, if a "true up" bill exceeds the last estimated bills by 50 percent or more. This offer of a payment plan should reduce the economic impact of

¹⁴ *Id.* at p 1; see also Direct Testimony of Gary W. Grant, Jr. ("Grant Direct"), p.8.

¹⁵ Trout Letter, p. 7; see also Emert Direct, p. 8-9.

¹⁶ *Id.* at 6-7; see also Emert Direct, p. 7.

¹⁷ Emert Direct, p. 7-9.

the bill for the customer's actual usage, caused by the lack of accuracy of the estimated usage previously billed.

We require Potomac Edison to change its bill format to alert a customer that a bill is based upon an estimated reading by highlighting the word “estimated.”¹⁸ This information may aid a customer in monitoring the type of reading done in any given month.

D. Issue No. 4: What is/are the method(s) used by PE to estimate its customers’ bills to ensure that they are reasonable, accurate and utilize industry best practices? How does the meter reading process and associated cost compare to those used by other power companies?

Potomac Edison states that it now has in place an updated and more accurate meter reading software algorithm which will increase the accuracy of its billings generated by an estimated reading.¹⁹ In 2013, the Company incorporated more data into its levelized usage calculations and began to utilize prior year data more frequently.²⁰ In 2014, based on the results of the Electric Power Research Institute’s study of PE’s algorithm, the Company, *inter alia*, further increased the use of levelization and began using the customer’s usage history to calculate a more individualized weather adjustment.²¹ In 2015, the Company established an additional control for algorithm accuracy, whereby a manual review will issue if an estimate exceeds a customer-specific maximum amount derived from individual usage history.²² Moreover, in order to ensure the accuracy of the algorithm and further improve it, Potomac Edison “has created an average aggregate accuracy metric to monitor the Enhanced Estimation Algorithm’s

¹⁸ COMAR 20.50.04.03A.(9) and 20.50.05.06E.

¹⁹ Trout Letter, p. 7; Grant Direct, p. 8-10.

²⁰ Grant Direct, p. 8.

²¹ *Id.*

²² *Id.* at 10.

performance over a 12 month period and is in the process of implementing the monitoring procedures.”²³

Staff Witness Ratushny’s direct testimony includes a comparison of meter reading practices of Maryland utilities.²⁴ Maryland utilities other than Potomac Edison have adopted various technologies to access customer meters remotely.²⁵ Potomac Edison primarily reads meters manually.²⁶ Its meter readers “drive their routes and use hand-held computers to record meter readings and account information.”²⁷ Potomac Edison’s meter reading cost has varied in recent years from \$7.09 per customer per year to \$7.43 per customer per year.²⁸ Implementation of systems of “smart meters” that are enabled to provide automatic, remote reading as part of an Advanced Metering Infrastructure (“AMI”) system is a costly endeavor.²⁹

E. Issue No. 5: If PE failed to perform actual meter readings on a timely basis did this failure impose burdens on customers, including(a) service terminations that occurred because of overcharges on estimated bills; (b)service terminations that occurred because of true-up adjustments to reconcile prior estimated bills; or (c) costs associated with the time value of overcharges on estimated bills?

The record in this case includes numerous complaints related to Potomac Edison’s unacceptable meter reading performance.³⁰ As noted above, the Company’s meter

²³ PE Ex. 2, Rebuttal Testimony of Gary W. Grant, Jr. (“Grant Rebuttal”), p. 4.

²⁴ See Attachment 17 to Ratushny Direct.

²⁵ Ratushny Direct, p. 10.

²⁶ *Id.*

²⁷ PE Ex. 3 (Emert Direct), p. 3.

²⁸ Reply Testimony of Michael J. Majoros (“Majoros Testimony”), p 16.

²⁹ The cost of implementing an AMI system was not entered into evidence, however, we know that the cost is significant. See also Brockway Testimony, p. 22.

³⁰ OPC Ex. 10 (Commission response to OPC’s October 3, 2013 Public Information Act Request for a compilation of all complaints made to OER since January 2012 regarding the frequency of Potomac Edison’s meter reading, or regarding billing concerns arising out of Potomac Edison’s meter reading practices) at Sequential Complaint Nos. 75-154.

reading rate fell below an acceptable level of reading within the time period mentioned in complaints filed with the Commission, the years 2011-2012. Numerous customers complained of receiving estimates that were too low.³¹ An even greater number of customers complained of estimates that were too high.³² The complaints do not allege service terminations occurred because of overcharges on estimated bills or because of true-up adjustments to reconcile prior estimated bills, however, Potomac Edison's failure to perform actual meter readings on a timely basis imposed burdens on customers.

Although the complaints themselves do not themselves constitute evidence and none of the complainants testified subject to cross examination, it is well within this Commission's area of expertise that the result of consecutive months of estimated meter reads is estimates that are either too low or too high.³³ Also within this Commission's experience and expertise is the impact on customers of estimated bills that are either too high or too low. Bills based on estimates that are too low result in subsequent high "true-up" bills that interfere with a customer's ability to budget their finances. High estimates result in customers paying for electricity well in advance of receiving it and essentially providing the utility with a no interest loan. It cannot be disputed that when Potomac Edison's meter reading rate fell below an acceptable level, the Company's customers were negatively affected.

³¹ OPC Ex. 10 at Sequential Complaint Nos. 86, 114, 125, 130, 132, and 151.

³² OPC Ex. 10 at Sequential Complaint Nos. 88, 90, 95, 97, 112, 113, 115, 116, 117, 120, 127, 144, 147, and 154. As OPC stated in its Initial Brief, a concern over high estimates was expressly stated in both of the Complaints giving rise to this docket. High estimates result in customers paying for electricity well in advance of receiving it.

³³ Moreover, the customer complaints in the record were used by OPC's expert witness, Nancy Brockway, to formulate her opinion that customers suffered harm as a result of PE's unacceptable meter reading practice between 2011 and 2012.

F. Issue No. 6: If PE failed to perform actual meter readings on a timely basis, what steps has PE taken to remedy negative impacts (if any) on PE’s customers resulting from PE’s failures to comply with meter-reading provisions of its tariff and/or any applicable laws of regulations?

As outlined above, Potomac Edison has taken steps to ensure its customers’ meters are read in accordance with its tariff and to ensure its estimations of its customers’ bills are reasonable, accurate and utilize industry best practices. However, Potomac Edison maintains that its customers have not been harmed by its failure to perform actual meter readings on a timely basis, and therefore nothing the Company has done can be deemed as steps taken to remedy negative impacts on Potomac Edison’s customers resulting from its failures to comply with meter-reading provisions of its tariff and/or applicable regulations.

G. Issue No. 7: What customer feedback mechanism does PE have to appropriately address customers’ concerns about estimated bills or meter reading, and are PE employees properly trained to address these concerns?

Potomac Edison has a special group of employees who address billing issues; Company witness Grant described in detail the specialized training, retraining, and monitoring that those employees receive.³⁴ We are not, as part of this Order, requiring Potomac Edison to take additional steps with regard to training its billing group customer service representatives.³⁵

H. Issue No. 8: If PE failed to comply with the meter-reading provisions of its tariff and/or any applicable laws or regulations, what changes, if any, should be made to PE’s tariff?

Although Potomac Edison failed to comply with the meter-reading provisions of its tariff and applicable regulations, its tariff does not need to be modified to require an

³⁴ Grant Direct, p. 4-5; Grant Rebuttal, p. 10.

³⁵ In this regard we reverse that portion of the Proposed Order at p. 18-19.

actual reading on a monthly schedule.³⁶ The decade’s long history of read rates with the bi-monthly reading tariff indicates that the timing of readings, allowed under the tariff provisions, was not the main cause of the problems that occurred during 2011-2012. In addition, Potomac Edison’s read rates have improved and appear to have achieved an acceptable level. In 2013, the Company’s read rate was 92.4%.³⁷ In 2014, despite two major storms and three other reportable major outage events, the rate was 91.6%.³⁸

However, Potomac Edison should have a system in place to promptly rectify missed reads by generating a “must read”³⁹ order when an account has had two consecutive estimates so that if, following an estimated reading, a scheduled actual meter reading is estimated, for whatever reason, the Company obtains an actual reading the following month, such that a customer would never go more than approximately 90 days without an actual meter reading.⁴⁰

I. Issue No. 9: If PE failed to perform actual meter readings on a timely basis, what additional actions, if any, should the Commission take?

As set forth above, Potomac Edison did fail to perform actual meter readings on a timely basis. The Commission is therefore requiring Potomac Edison to take the

³⁶ We agree with OPC and PE that requiring monthly meter reads would be costly and, based on the evidence, unnecessary. Memorandum on Appeal of the Office of Peoples Counsel, p. 4 – 5; Memorandum on Appeal of the Potomac Edison Company, p. 44. We therefore reverse that portion of the Proposed Order at p. 16.

³⁷ Rebuttal Testimony of Charity A. Emert (“Emert Rebuttal”), p. 14.

³⁸ *Id.*

³⁹ A “must read” order is a “tool” that PE utilizes to “force[] .. an unplanned scheduled read [that is] not on its normal schedule.” Transcript of October 14, 2015 hearing, p. 129.

⁴⁰ This direction should not be taken to mean that PE is authorized to perform one actual read every 90 days. PE’s tariff provides for an actual read at least bimonthly. The Commission recognizes, however, that occasionally exigent circumstances, beyond PE’s control, may arise that prevent a bimonthly actual read as scheduled.

additional steps outlined in Section II.C. Additionally, a civil penalty will be assessed as outlined in Section III hereof.

III. IMPOSITION OF CIVIL PENALTY

The regulatory requirements in this case are provided by the applicable sections of COMAR cited. In particular, COMAR 20.50.05.05 provides:

Meters shall be read at approximate monthly intervals, unless otherwise authorized by the Commission.

Potomac Edison was authorized by its tariff to read meters monthly or bimonthly. However, when the Company missed an actual read, it did not deviate from its bi-monthly meter read schedule, resulting in three consecutive months of estimated readings. In those cases, Potomac Edison did not read meters even bimonthly, and was therefore in violation of its tariff and of COMAR 20.50.05.05, and of Commission Order No. 57101 (and subsequent Commission Orders) authorizing the tariff provision for either monthly or bi-monthly meter reads.

As set forth in Section II.A above, Potomac Edison's poor management of personnel and poor pre-storm planning were in violation of COMAR 20.50.02.01 and Potomac Edison's bill format violated COMAR 20.50.04.03A.(9).

Pursuant to PUA §13-201(b)(1) and (2), the Commission may impose a civil penalty not exceeding \$25,000 per violation against a person who violates a provision of Division I of the Public Utilities Article, or an effective and outstanding direction, ruling, order, rule, or regulation of the Commission. Pursuant to PUA §13-201(c), a civil penalty may be imposed in addition to any other penalty authorized, and each violation, or each day of a violation, is a separate offense. PUA §13-201 further provides that:

(d) The Commission shall determine the amount of any civil penalty after considering:

- (1) The number of previous violations of any provision of this article;
- (2) The gravity of the current violation;
- (3) The good faith efforts of the violator in attempting to achieve compliance after notification of the violation; and
- (4) Any other matter that the Commission considers appropriate and relevant.

PUA §13-201(d).

The record does not contain discussion of previous violations by Potomac Edison. We consider the violations by Potomac Edison of its tariff and of applicable COMAR provisions, outlined in this Order, grievous. The record in this case includes numerous complaints related to the Company's unacceptable meter reading performance.⁴¹ As set forth in detail above, the Company's meter reading rate fell below an acceptable level of reading within the time period mentioned in complaints filed with the Commission, the years 2011-2012. When Potomac Edison's meter reading rate fell below an acceptable level, resulting in consecutive months of estimated reads, a significant number of its customers were negatively affected.⁴²

Potomac Edison claims that it remedied its meter reading deficiencies on its own initiative. We believe the full extent of Potomac Edison's efforts to remedy its meter reading deficiencies, and, in particular, to ensure more reasonable estimations of customers' bills, was the result of the initiation of complaints to the Commission by its customers. The record includes complaints about Potomac Edison's poor customer

⁴¹ OPC Ex. 10 (Commission response to OPC's October 3, 2013 Public Information Act Request for a compilation of all complaints made to OER since January 2012 regarding the frequency of Potomac Edison's meter reading, or regarding billing concerns arising out of Potomac Edison's meter reading practices) at Sequential Complaint Nos. 75-154.

⁴² Even if whether PE's customers were negatively affected by PE's unacceptable meter reading could be disputed, this is only one of several factors considered by the Commission in determining the amount of the civil penalty under PUA §13-201(d).

service in responding to the customer inquiries. The customer inquiries, if handled differently, could have led to a quicker investigation by the Company and a quicker attempt at compliance with its tariff. Regardless, Potomac Edison had constructive notice of the violations as soon as customers began inquiring about inaccurate bills based on repeated estimated bills. Thus, although good faith efforts to achieve compliance after notification of the violation is a mitigating factor under PUA §13-201(d)(3), in this case, Potomac Edison's efforts were somewhat belated.

The Commission also considers appropriate and relevant to its determination of the amount of civil penalty the need to provide an incentive for Potomac Edison to, in the future, comply with its tariff and applicable COMAR provisions. Upon consideration of the above factors,⁴³ we find that due to Potomac Edison's violations of its tariff and of applicable COMAR provisions, a civil penalty in the amount of \$25,000 is appropriate.

IV. COMMISSION PROCEDURE

Although OPC's position on appeal in opposition to requiring monthly meter reading has been addressed, we will address OPC's contentions with regard to Commission procedure. The PULJD, after conducting hearings in this matter, issued an initial Proposed Order on Friday, April 1, 2016 (the "Order"). The Commission, on Monday, April 4, 2016, issued an order in this matter (the "Commission Order"). As Staff points out, the Commission Order indicates that it was "after review" that the Proposed Order was discovered to having been inadvertently issued and in need of correction.

⁴³ The supposed "backtracking" by Potomac Edison from "accepting responsibility" for its 2011 and 2012 read rates was not a factor considered.

Staff is correct that the Commission Order does not direct any specific modification to the Order. Rather, it simply reverses the Order and directs the PULJD to issue a completed, corrected Proposed Order. The Commission Order does not in any way direct the PULJD to any item or issue that is in need of correction. It does not direct the PULJ to rule in any specific fashion. The Commission Order simply directs the PULJD to issue the requisite Proposed Order, as required by PUA §3-104(d)(2)(ii), without further error.⁴⁴

There is not a provision in the Public Utilities Article or in COMAR that specifically denotes the correct procedure for the Public Utility Law Judge Division to use should it need to withdraw, vacate, or reverse, or otherwise remove an Order that it has issued in error. Pursuant to PUA §2-108(d)(5)(ii), Public Utility Law Judges are a separate organizational unit and shall report directly to the Commission. Without any specific authority to reverse a Proposed Order that was issued in error, a Public Utility Law Judge needs to have such an order issued by the Executive Secretary on behalf of the Commission.⁴⁵

V. CONCLUSION

This Final Order resolves all of the Parties' issues on appeal as noted herein.

IT IS THEREFORE, this 19th day of June, in the year Two Thousand Seventeen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Proposed Order of the PULJ issued May 5, 2016 is affirmed in part and reversed in part;

(2) That The Potomac Edison Company shall:

⁴⁴ Reply Memorandum on Appeal by the Staff of the Public Service Commission, p. 9-10.

⁴⁵ Reply Memorandum on Appeal by the Staff of the Public Service Commission, p. 10.

(a) have a system in place to promptly rectify missed reads by generating a “must read” order when an account has had two consecutive estimates so that if, following an estimated reading, a scheduled actual meter reading is estimated, for whatever reason, the Company obtains an actual reading the following month, such that a customer would never go more than approximately 90 days without an actual meter reading;

(b) file a monthly report for 24 months following this Order of the total number of and the percentage of actual reads that were not done but instead had an estimated read for billing purposes;

(c) offer a payment plan, of up to twelve months in duration, to any customers affected, if a “true up” bill exceeds the last estimated bills by 50 percent or more;

(d) change its bill format to alert a customer that a bill is based upon an estimated reading by highlighting the word “estimated”;

(3) That The Potomac Edison Company shall pay a civil penalty of \$25,000 within 30 days of the date of this Order; and

(4) That any open motions not specifically addressed herein are denied.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Michael T. Richard
Commissioners*

*Commissioner Anthony J. O’Donnell did not participate in this decision.