

**ORDER NO. 88554**

IN THE MATTER OF THE MERGER OF EXELON CORPORATION AND CONSTELLATION ENERGY GROUP, INC.	* * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND  _____ CASE NO. 9271 _____
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**Issue Date: February 2, 2018**

In Order No. 85187, issued on November 8, 2012, the Public Service Commission of Maryland (“Commission”) awarded more than \$112 million from the Customer Investment Fund (“CIF”) to support programs serving customers and communities in the Baltimore Gas and Electric Company (“BGE” or the “Company”) service territory.<sup>1</sup> The CIF monies were allocated initially to fund 16 proposals from six awardees: the Mayor and City Council of Baltimore (“Baltimore City”); the Maryland Energy Administration (“MEA”); the Maryland Department of Housing and Community Development (“DHCD”); Baltimore County; Comprehensive Housing Assistance, Inc. (“CHAI”); and the Fuel Fund of Maryland, Inc. (“Fuel Fund”) (collectively, the “CIF Recipients”). In Order No. 85636, issued on June 4, 2013, the Commission established several reporting directives and approved a semi-annual disbursement schedule regarding the distribution

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<sup>1</sup> The CIF refers to a \$113.5 million fund designed to provide customers of BGE with energy efficiency, conservation, and limited-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. Initially, the remainder of the CIF was reserved for administrative costs (such as program evaluation and fund management); however, the remaining balance was awarded to Baltimore City in Order No. 87991.

of funds from the CIF to begin in the first quarter of fiscal year (“FY”) 2014. Subsequent orders addressed the disbursement schedules in FY 2015, FY 2016, and FY 2017.<sup>2</sup>

Additionally, through Order No. 87991 issued on January 20, 2017, the Commission granted the requests for additional CIF funding proposed by Baltimore City, noting that once such disbursements occurred in the first quarter of FY 2018, then all disbursements from the CIF funded by contributions from Exelon Corporation and created as a condition of approval of the Exelon – Constellation merger would be complete.<sup>3</sup> The Commission noted, however, that the annual reports discussed in prior orders issued as part of the above-captioned proceeding shall continue until such time that the original and additional CIF award monies are depleted.<sup>4</sup>

On August 31, 2017, the Commission provided notice that it would conduct a hearing regarding a review of the CIF Recipients’ annual reports pertaining to FY 2017 CIF program expenditures, as well as the final reports submitted by any CIF Recipient that had expended their total CIF award by the conclusion of FY 2017.<sup>5</sup> Pursuant to the Commission’s directive, on January 3, 2018 the Commission’s Technical Staff (“Staff”) filed its review of the CIF Recipients’ FY 2017 annual reports and final reports submitted by the applicable CIF Recipients, along with specific recommendations regarding the

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<sup>2</sup> See Order No. 86399 (June 16, 2014); Order No. 86787 (Dec. 29, 2014); Order No. 87015 (June 10, 2015); Order No. 87306 (Dec. 22, 2015); Order No. 87609 (June 15, 2016); Order No. 87991 (Jan. 20, 2017); Order No. 88001 (Jan. 30, 2017).

<sup>3</sup> Order No. 87991 at 16-17.

<sup>4</sup> *Id.* at 16.

<sup>5</sup> ML#216710: *Notice of Hearing and Request for Reports: Customer Investment Fund* (Aug. 31, 2017). The hearing was rescheduled from November 30, 2017 to January 9, 2018 after the Commission received several requests for an extension to file the required reports. ML#217740: *Grant of Requests for Extension to File Reports and Notice of Hearing Date Change* (Nov. 8, 2017).

ongoing implementation of certain CIF-funded programs.<sup>6</sup> Subsequently, the Commission conducted a legislative-style hearing on January 9, 2018 to consider Staff's recommendations, as well as the CIF FY 2017 annual reports filed by: Baltimore City;<sup>7</sup> the Baltimore County Sustainable Dundalk Initiative;<sup>8</sup> CHAI;<sup>9</sup> DHCD;<sup>10</sup> the Fuel Fund; and MEA.<sup>11</sup> At the January 9, 2018 hearing, the Commission also received comment on the final reports filed by: the Baltimore County Sustainable Dundalk Initiative;<sup>12</sup> CHAI in relation to its Energy Home Improvement Loan Fund;<sup>13</sup> and MEA with respect to its Next Generation Energy Efficiency Gains Program, as well as its Small Business Energy Advance ("SBEA") Program.<sup>14</sup>

## **Recommendations and Modifications Pertaining to Ongoing and Approved CIF Programs**

While all of the CIF programs are fully disbursed, Staff continues to monitor and report on the CIF programs for purposes of reviewing program performance and

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<sup>6</sup> ML#218393: *Comments of the Public Service Staff Regarding the Exelon Customer Investment Fund Annual Reports for Fiscal Year 2017 and Final Reports* (Jan. 3, 2018) ("Staff Comments"); ML#218441: *Errata to Staff's Final Report for Fiscal Year 2017* (Jan. 5, 2018) ("Staff Comments Errata").

<sup>7</sup> ML#217355: *FY2017 Customer Investment Fund* (Oct. 13, 2017) ("Balt. City FY17 Report"); ML#205772: *Replacement Errata Versions of the City of Baltimore's Appendices A and E Regarding the Customer Investment Fund* (Nov. 29, 2016) ("Balt. City FY16 Report Errata").

<sup>8</sup> ML#218049: *FY2017 Customer Investment Fund Annual Report* (Dec. 1, 2017) ("Balt. County FY17 Report").

<sup>9</sup> ML#217117: *CHAI FY 17 Annual Report for the Energy Home Improvement Loan Fund* (Sept. 28, 2017).

<sup>10</sup> ML#217125: *2017 Annual Customer Investment Fund Maryland Report* (Sept. 29, 2017) ("DHCD FY17 Report"); ML#217379: *Errata to Financial Table Reporting for CIF FY 2017* (Oct. 17, 2017); ML#217380: *Errata to Financial Table Reporting for CIF FY 2014-2017* (Oct. 17, 2017); ML#218392: *Program Updates and Requests* (Jan. 3, 2018) ("DHCD Program Updates").

<sup>11</sup> ML#218038: *FY17 Report on the Exelon CIF Net Zero Energy Schools Program* (Dec. 1, 2017);

ML#218040: *Amended Next Generation Efficiency Gains Annual Report for FY 2017* (Dec. 1, 2017).

<sup>12</sup> ML#218051: *Baltimore County Sustainable Dundalk Initiative CIF Program Close Out Report* (Dec. 1, 2017).

<sup>13</sup> ML#218173: *CHAI Final Report for Energy Home Improvement Loan Fund* (Dec. 13, 2017) ("CHAI Final Report").

<sup>14</sup> ML#217582: *Next Generation Energy Efficiency Gains Final Report* (Oct. 30, 2017); ML#218038: *Final Report on the Exelon Customer Investment Fund Programs* (Dec. 1, 2017).

resolving any issues encountered during deployment of the funds. After reviewing the FY 2017 annual reports, Staff offered for our consideration several recommendations related to the ongoing administration of certain CIF programs, of which we accept several and modify others.

We accept Staff's recommendation that DHCD continue, until such time that all CIF monies are depleted, providing quarterly progress reports to Staff regarding the implementation of its two CIF programs: the Improved Energy Efficiency for Affordable Multifamily Housing Program, and the Targeted and Enhanced Weatherization Program.<sup>15</sup> In accordance with Staff's recommendation, we also direct DHCD to provide Staff with updated and accurate forecasts for its FY 2018 CIF Multifamily program.<sup>16</sup> We note, however, that Staff's remaining recommendation with respect to the DHCD-administered CIF programs was rendered moot by the filing of a program update by DHCD on January 3, 2018 that occurred after the filing of Staff's Comments in this matter, but before the January 9, 2018 hearing.<sup>17</sup>

Through this same January 3, 2018 update, DHCD raised for our consideration several additional items. Specifically, while we applaud DHCD's desire to assist additional low-income households in Maryland through its request for additional funding,<sup>18</sup> we must deny this request and reaffirm our statement in Order No. 87991 that all disbursements from the CIF funded by contributions from Exelon Corporation and created as a condition of approval of the Exelon – Constellation merger are now

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<sup>15</sup> Staff Comments at 40.

<sup>16</sup> *Id.*

<sup>17</sup> Specifically, Staff recommended that DHCD provide an update as to the status of its progress toward encumbering and appropriating the total CIF award. Staff Comments at 40. On January 3, 2018, DHCD confirmed that it is on track to expend all of its CIF monies by the end of FY 2018. DHCD Program Updates at 1.

<sup>18</sup> DHCD Program Updates at 1.

complete.<sup>19</sup> Additionally, we affirm the Department’s understanding of the requirement that Evaluation, Measurement, and Verification (“EM&V”) analyses take place with respect to both of its CIF programs, and that such analyses must be funded from the CIF awards previously disbursed to DHCD.<sup>20</sup> We do, however, grant DHCD’s request for an extension to complete and file the required EM&V analyses through December 31, 2019.<sup>21</sup> Since our decision will extend the final analyses past the date for which Staff has procured auditing services, we accept DHCD’s offer to utilize its existing independent auditing contracts to review programmatic matters that occur during FY 2018.<sup>22</sup> Staff is directed to communicate to DHCD the guidelines and expectations for this audit in accordance with the procedures followed by Staff’s current CIF auditor. DHCD is directed to file with the Commission the required audit no later than February 1, 2020.

Although Staff did not render a recommendation on the matter, it did identify for our consideration the potential challenges, and conversely the potential advantages, associated with a program modification requested by MEA with respect to its Net Zero Energy (“NZE”) School Program.<sup>23</sup> Due to earlier setbacks related to the identification of qualifying schools, as well as subsequent construction delays, MEA now anticipates that the completion of two of its three NZE schools will not occur until the summer of 2020. Because of this, and due to the additional time needed to complete the required EM&V analysis, MEA is requesting an extension of its NZE Schools Program through

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<sup>19</sup> Order No. 87991 at 16-17.

<sup>20</sup> DHCD Program Updates at 2.

<sup>21</sup> *Id.*

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

<sup>23</sup> Staff Comments at 18.

February 2021.<sup>24</sup> As noted by Staff, if the extension is granted, MEA's NZE Schools Program will experience the same issue associated with the expiration of the Staff's CIF auditor contract as identified in the DHCD context.<sup>25</sup> Thus, while we grant MEA's requested extension of its NZE Schools Program through the end of FY 2021, we similarly direct MEA to utilize an existing contract or to otherwise procure an independent auditor to review programmatic matters for its NZE Schools Program that occur following the conclusion of FY 2018. Staff is directed to communicate to MEA the guidelines and expectations for this audit in accordance with the procedures followed by Staff's current CIF auditor. MEA is directed to file with the Commission the required audit no later than August 1, 2021.<sup>26</sup>

Lastly, Staff recommended that we direct Baltimore City to provide its final report on CIF program activities at the conclusion of FY 2018.<sup>27</sup> After reviewing Baltimore City's FY 2017 annual report, as well as Staff's comments thereto, we find that the more prudent course of action at this juncture is to authorize Baltimore City to continue implementation of its CIF programs through FY 2019 due to the magnitude of projected funds remaining to be spent in several areas. To the extent that Baltimore City does conclude any of its CIF program offerings in FY 2018, final reports regarding those programs should be filed 120 days after the conclusion of the fiscal year; otherwise, the final report for all Baltimore City CIF programs shall be filed no later than 120 days following the conclusion of FY 2019.

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<sup>24</sup> MEA FY 2017 NZE Schools Report at 2.

<sup>25</sup> Staff Comments at 18.

<sup>26</sup> In the interim, MEA is reminded that it must comply with annual reporting requirements for the NZE Schools Program as first described in Order No. 85187 at 24.

<sup>27</sup> Staff Comments at 40.

Additionally, we note that to the extent any CIF program administered by Baltimore City is continued into FY 2019 as authorized herein, the City would encounter the same issue contemplated with respect to the timing of the audit for certain DHCD and MEA CIF programs, as discussed above. Therefore, while we authorize Baltimore City to continue implementing previously-approved CIF programs during FY 2019 if previously-disbursed funds remain unspent, we will require the City to utilize an existing contract or to otherwise procure an independent auditor using existing funds to review programmatic matters for any of its CIF program expenditures that occur following the conclusion of FY 2018. Staff is directed to communicate to Baltimore City the guidelines and expectations for this audit in accordance with the procedures followed by Staff's current CIF auditor. Baltimore City is directed to file with the Commission the required audit no later than February 1, 2020.

### **Recommendations Regarding Concluded CIF Programs**

Once an approved CIF program has concluded, the CIF Recipient is required to file a final report with the Commission regarding the overall performance of the program, conclusions on the efforts made during its implementation, and information pertaining to whether the program will continue via another funding source.<sup>28</sup> As evidenced by the submission of final reports by several CIF Recipients, some of the programs funded by the CIF have reached their natural conclusion, while others have been fully disbursed but remain active offerings due to a revolving loan component of the original offering. Specifically, the SBEA Program initially proposed by MEA and the Energy Home

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<sup>28</sup> ML#150163: *Exelon Customer Investment Fund Guidelines on Reporting* (Oct. 18, 2013) at 2.

Improvement Loan Fund administered by CHAI are both fully disbursed and have expended – or nearly expended<sup>29</sup> – their initial CIF awards, but nonetheless remain active offerings through the repayment of funds via the revolving mechanism of the loans.

Thus, while we accept the final reports provided by MEA for the SBEA Program and by CHAI for its Energy Home Improvement Loan Fund, we remind these parties of their continuing obligations related to self-sustaining programs as previously articulated in Order No. 87991.<sup>30</sup> As recommended by Staff<sup>31</sup> and consistent with prior Commission orders, CHAI is directed to continue operating its revolving loan fund and grant program until such time that the funds initially sourced from the CIF are fully depleted.<sup>32</sup> BGE, as the administrator of the SBEA Program, is under the same continuing obligation to administer the SBEA until such time that the funds initially sourced from the CIF are fully depleted, and to also maintain separate accounting for the two SBEA Program funding streams.<sup>33</sup> MEA (as the actual CIF Recipient related to the SBEA Program) and CHAI must continue to complete the templates associated with the annual reports for these CIF programs until such time that the funds initially sourced from the CIF are fully depleted, but are otherwise considered to have satisfied the reporting obligations

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<sup>29</sup> According to Staff, CHAI is projected to have \$7,304 in original CIF funds available to expend during FY 2018. Staff Comments at 6.

<sup>30</sup> “To the extent that this was unclear before, we reaffirm that monies distributed to entities through the CIF may only be used for program elements contained within the proposals submitted to and approved by the Commission in this proceeding, regardless of whether the funds have cycled through a revolving mechanism. To the extent that a CIF Recipient wishes to expend its CIF monies in an alternative manner or in a different budget category than initially proposed and approved by Commission order, the CIF Recipient must seek a program modification from the Commission. Further, if a CIF Recipient dissolves its CIF Program prior to depletion of disbursed CIF monies, the Commission will exercise its continuing jurisdiction over the CIF to require repayment of the un-deployed funds.” Order No. 87991 at 11 – 12.

<sup>31</sup> Staff Comments at 7.

<sup>32</sup> The phrase “funds initially sourced from the CIF” refers to all monies disbursed from the CIF to an approved CIF Recipient, inclusive of funds that may have been recycled through a revolving loan mechanism.

<sup>33</sup> Order No. 87991 at 12.



associated with the CIF for the SBEA and Energy Home Improvement Loan Fund programs.

With respect to the final reports filed by the Baltimore County Sustainable Dundalk Initiative and by MEA for its Next Generation Energy Efficiency Gains for the Industrial Sector Program, we accept those filings and find that the reporting obligations associated with the CIF have been satisfied with respect to those two programs. We also note the conclusion of the reporting obligations associated with the CIF program administered by the Fuel Fund, but take this opportunity to remind the Fuel Fund of our prior directive issued in Order No. 87991 with respect to the expenditure of interest money garnered from the \$5 million quasi-endowment fund established using CIF monies.<sup>34</sup>

**IT IS, THEREFORE,** this 2nd day of February in the year Two Thousand Eighteen, by the Public Service Commission of Maryland,

**ORDERED:**

(1) That DHCD is directed to continue the Improved Energy Efficiency for Affordable Multifamily Housing Program and the Targeted and Enhanced Weatherization Program until such time that all CIF monies are depleted, providing quarterly progress reports to Staff regarding the implementation of its two CIF programs;

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<sup>34</sup> Order No. 87991 at 15, note 44 states in part that, “We remind the Fuel Fund that it has flexibility with respect to the expenditure of interest money garnered from the quasi-endowment fund; however, if the Fuel Fund wishes to in the future expend any of the \$5 million principal, it must first seek a CIF program modification from the Commission.”

(2) That DHCD is directed to provide Staff with updated and accurate forecasts for its FY 2018 CIF Improved Energy Efficiency for Affordable Multifamily Housing Program;

(3) That DHCD's request for additional funding through the CIF for its Targeted and Enhanced Weatherization Program is denied;

(4) That DHCD's request for an extension through December 31, 2019 to complete and file the required EM&V analyses for its Targeted and Enhanced Weatherization Program and its Improved Energy Efficiency for Affordable Multifamily Housing Program is granted;

(5) That DHCD is directed to utilize existing contracts or to procure a new independent auditor to review programmatic matters that occur following FY 2018, and to file such report no later than February 1, 2020;

(6) That MEA's request to extend its Net Zero Energy Schools Program is granted through the end of FY 2021;

(7) That MEA is directed to utilize existing contracts or to procure a new independent auditor to review programmatic matters for its Net Zero Energy Schools Program that occur following FY 2018, and to file such report no later than August 1, 2021;

(8) That Baltimore City is authorized to continue implementing its CIF programs through FY 2019, to the extent that monies previously disbursed through the CIF are not fully depleted;

(9) That Baltimore City is directed to file a final report on each of its CIF programs no later than 120 days following the conclusion of the fiscal year in which the CIF program ceased operations;

(10) That Baltimore City is directed to utilize existing contracts or to procure a new independent auditor to review programmatic matters that occur following FY 2018, and to file such report no later than February 1, 2020;

(11) That the final reports submitted by: MEA for its Small Business Energy Advance Program; CHAI; and the Fuel Fund, are accepted, subject to the conditions described herein; and

(12) That the final reports submitted by MEA for its Next Generation Energy Efficiency Gains for the Industrial Sector Program, and by the Baltimore County Sustainable Dundalk Initiative, are accepted.

*W. Kevin Hughes*  
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*Michael T. Richard*  
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*Anthony J. O'Donnell*  
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*Odogwu Obi Linton*  
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*Mindy L. Herman*  
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Commissioners