

ORDER NO. 89482

IN THE MATTER OF ALTERNATIVE
 RATE PLANS OR METHODOLOGIES
 TO ESTABLISH NEW BASE RATES
 FOR AN ELECTRIC COMPANY OR
 GAS COMPANY

*
*
*
*
*
*
*
*
*

BEFORE THE
 PUBLIC SERVICE COMMISSION
 OF MARYLAND

Case No. 9618

Issue Date: February 4, 2020

ORDER ESTABLISHING MULTI-YEAR RATE PLAN PILOT

I. EXECUTIVE SUMMARY

1. The Commission is charged with setting just and reasonable rates, which strike the proper balance between the interests of utilities, ratepayers, and State policy objectives. In Order No. 89226, the Commission found that the record developed in Public Conference 51 (“PC51”) supported the use of a multi-year rate plan (“MRP”) as an alternative to traditional ratemaking methods, and determined that a properly constructed MRP can result in just and reasonable rates and yield several benefits over time. Among these benefits, the Commission determined that the use of MRPs could shorten the cost recovery period, provide more predictable revenues for utilities and more predictable rates for customers, spread changes in rates over multiple years, and decrease administrative burdens on regulators by staggering filings over several years.¹ This Order establishes a framework for a pilot program² for the Maryland utility that is the

¹ Order No. 89226 at 54.

² This Pilot is a continuation of our efforts to gain additional experience and lessons learned regarding MRP filings, so that we can proceed with the adoption of regulations.

first to file an MRP application to serve as a “Pilot Utility” pursuant to the specific instructions in this Order.

2. The Commission recognized that the development of an alternative form of ratemaking required stakeholder input and directed a Working Group (“WG”)³ to provide recommendations regarding the content of an initial MRP filing. On December 20, 2019, the WG leader filed an Implementation Report (“Report”)⁴ setting out the WG recommendations. While the WG did not come to consensus on every item in the Report, the Commission benefits from having a full understanding of the stakeholders’ positions and arguments. This Order accepts, with modifications, the WG recommendations and establishes a Pilot for one utility. The Commission finds that undertaking a pilot will allow it to evaluate the use of MRPs in a controlled manner with minimal administrative burden and limited regulatory uncertainty for the initial utility seeking a Pilot MRP. After gaining valuable experience with implementing the Pilot MRP, the Commission will promulgate regulations to ensure the orderly consideration of MRPs statewide.

3. In addition, Order No. 89226 separately tasked the WG to evaluate the use of performance-based rates (“PBR”) in connection with the use of an MRP. The WG was tasked with evaluating “how best to integrate performance-based measures into a multi-year rate plan by identifying goals and outcomes (e.g., integrating more renewable resources and energy efficiency, encouraging peak demand reductions, facilitating storage, supporting grid modernization, or any other State policy goals that may be in

³ See Appendix 1 for a list of participants in the workgroup.

⁴ *Exploring the Use of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company*, PC51, and *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or a Gas Company*, Case No. 9618, Implementation Report, December 20, 2019 (“Report”).

place or enacted) that align utility performance with State policy objectives that are not already addressed through existing regulatory measures.”⁵ The efforts of the WG remain underway, culminating in a report to the Commission later this year.

4. This Order directs that the Pilot Utility must demonstrate that its rate adjustment is based on a historic test year and that the plan: (1) contains all of the filing requirements found in Item 2 of the Report, as modified herein; (2) allows up to three future rate-effective years with an agreement to “stay out” for that period; (3) contains specific criteria for any “off-ramp” process (i.e., extraordinary circumstances outside the utility’s control that would warrant the Commission’s intervention to modify or terminate the MRP); (4) tracks the accuracy of the utility’s forecast; (5) has an annual informational filing which the Commission may use as the basis for mid-cycle MRP adjustments; and (6) contains adequate reporting requirements. This Order finds that these criteria represent minimum MRP filing requirements. The Pilot Utility may provide additional information or criteria for the Commission to consider as part of the Pilot MRP application.

5. The Report reflected wide disagreement within the WG regarding the annual reconciliation process and whether Order No. 89226 required a process, under which over- and under-collections are flowed through a rider or other mechanism back to ratepayers in the current MRP rate-effective period. Upon consideration of the views and proposals presented in the Report, for purposes of this Pilot, the Commission does not approve an annual reconciliation process. In Order No. 89226, the Commission noted that The Brattle Group’s research demonstrated that “multi-year rate plans typically have

⁵ Order No. 89226 at 58.

[a] reconciliation more limited in scope and focused on capital expenditures, to the extent that reconciliations are included at all.”⁶ As discussed below, in lieu of an annual reconciliation, the Pilot Utility must file an annual informational filing within 90 days of the end of the first and second annual periods during the Pilot MRP. The annual informational filing shall contain worksheets and a detailed explanation showing the differences between a utility’s MRP forecasted projections for the annual period and what the utility actually collected and spent in that year. An example of the worksheet is in Appendix 1.⁷

6. Upon review of the annual informational filing, if the Technical Staff of the Public Service Commission (“Staff”), Office of People’s Counsel (“OPC”), or another party demonstrates a significant disparity between revenues and expenses to the detriment of ratepayers, the Commission may hold a hearing and determine whether an adjustment of the utility’s revenue requirement and/or rates is appropriate. If the Commission determines that an adjustment is appropriate, the Commission will establish a rider for the remaining duration of the Pilot MRP rate-effective period. If no adjustment is determined to be appropriate, the Pilot Utility will continue to use the forecasted revenue requirements and rates that were established.

7. Additionally, the Pilot Utility operating under the Pilot MRP is required to file either a new traditional or MRP rate case at least 210 days prior to the end of the Pilot MRP, with a rate-effective date of the proposed tariffs such that, after the Commission suspension period, the rates would take effect immediately at the close of the final year of

⁶ *Id.* at 55, quoting The Brattle Group Report submitted by the Joint Exelon Utilities.

⁷ This template reflects the annual variances between forecasts and actuals and is similar to Attachment 2 to the Report.

the Pilot MRP. Review of this new rate case will include a prudence review of investments and spending during the rate-effective period of the initial MRP through the end of the historic test year (including any Commission-approved adjustments made through the hearing of the rate case). In conjunction with the new rate case filing, the Pilot Utility must also file a consolidated reconciliation for all historic actuals up through the historic test year, including accepted ratemaking adjustments. This filing must contain the detailed explanations and back-up materials of the previously-filed annual informational filings. Any over- or under- collections determined from the consolidated reconciliation filing will be flowed through base rates in the rate-effective period as part of the new rate case.

8. Within 120 days after the end of the initial MRP, the Pilot Utility must file a final reconciliation for any investments and costs in the MRP period not previously reviewed for prudence. Results of the final reconciliation will be included as a special rider on top of existing rates and may be amortized, if appropriate, on a case-by-case basis.

9. Approximately two years after the Pilot Utility's MRP tariffs become effective, the Commission will initiate a rulemaking to develop regulations to guide future MRP applications.

II. BACKGROUND

10. On August 6, 2019, the Commission issued Order No. 89226, allowing for Alternative Forms of Rate Regulation ("AFOR") to be explored and implemented in Maryland. Specifically, the Commission found that a properly constructed MRP, based on a historic test year that allows up to three future test years, can produce just and reasonable rates and can be implemented by Maryland electric and natural gas utility

companies, subject to developing the necessary processes and procedures.⁸ The Commission also found that aligning state policy goals and utility rate adjustments is an important objective which may be accomplished through PBRs.⁹ However, the record in PC51 suggested that the development of performance metrics and incentive mechanisms requires additional time, and therefore, the Commission directed the WG to separately investigate how best to integrate PBRs into an MRP.¹⁰ To assist with the examination and development of a properly constructed MRP, Order No. 89226 established a working group of interested parties and charged the Public Utility Law Judge Division to lead the WG in developing and submitting a detailed MRP implementation report addressing 11 main areas. On December 20, 2019, as a result of multiple WG meetings, the Chief Public Utility Law Judge (“Chief PULJ”) submitted the Report in Case No. 9618.

11. The Report notes that the Chief PULJ requested the Commission’s Technical Staff’s (“Staff”) assistance with drafting initial recommendations¹¹ for each of the 11 items, including multiple sub-items,¹² to provide a starting point for WG discussions and from which the WG could develop general consensus¹³ or express divergent views. The Report states that there was a significant amount of interest and participation in each of the eight WG meetings.¹⁴ The Report further states that interested participants had

⁸ Order No. 89226 at 56.

⁹ *Id.* at 57.

¹⁰ *Id.* at 58.

¹¹ These Staff recommendations are presented as “Strawman Positions” throughout the Implementation Report and will be referred to as Staff “proposals” throughout.

¹² “Items” referred to throughout this Order reference the questions sent to the WG in Order No. 89226 and answered, using the same numbering system, in the Report.

¹³ Various levels of consensus are described in the WG Report from “no consensus” to “consensus” without specific definition. Throughout this order, “general consensus” will be used to describe situations where the majority of parties reached an agreement and the positions of non-consensus parties will be noted, as appropriate.

¹⁴ Order No. 89226 at 1.

“ample opportunity to express their views, and question proposals and points of view, both orally and in writing.”¹⁵ As a result of this open process, the WG reached various levels of consensus on many items; however, the Commission believes additional experience and lessons learned will better inform our effort to adopt regulations. Accordingly, the Commission uses the Report as a starting point for forming a Pilot for one Maryland utility.

12. The Report also notes that on December 9, 2019, Exelon circulated an executive summary that sets forth its vision of an MRP from beginning to end and included sample exhibits. The WG made no recommendation on Exelon’s filing, explaining that it was unable to fully review Exelon’s proposal because it was filed late in the process. Accordingly, the Commission takes no action on Exelon’s executive summary.

13. On January 17, 2020, the OPC filed comments on the Report.¹⁶ Subsequently, on January 17, 2020, Staff filed a request for the Commission to disregard and strike from the record the comments OPC filed.¹⁷ Washington Gas Light Company (“WGL”) on January 21, 2020 filed a letter in support of Staff’s request to strike and disregard OPC’s comments.¹⁸ On January 21, 2020, the OPC filed an omnibus response in opposition to motions to strike and disregard OPC’s January 17, 2020 filed comments in this proceeding.¹⁹ Baltimore Gas & Electric Company (“BGE”), Potomac Electric Power Company (“Pepco”) and Delmarva Power & Light Company (“DPL”) also known as

¹⁵ *Id.*

¹⁶ *Comments of the Maryland Office of the People’s Counsel on Chief Public Utility Law Judge Ryan C. McLean’s Implementation Report*, Case No. 9618, January 17, 2020.

¹⁷ *Staff Request to Disregard and Strike Comments of the Maryland Office of the People’s Counsel on Chief Public Utility Law Judge Ryan C. McLean’s Implementation Report*, Case No. 9618, January 17, 2020.

¹⁸ Letter dated January 21, 2020 from Washington Gas Light Company.

¹⁹ *The Maryland Office of the People’s Counsel Omnibus Response In Opposition To Motions To Strike and Disregard OPC’s Comments*, Case No. 9618, January 21, 2020.

(“Joint Exelon Utilities”) filed a letter in support of WGL and Staff to disregard and strike OPC’s comments.²⁰ The Commission takes no action on these items.

III. IMPLEMENTING A MULTI-YEAR RATE PLAN

14. MRPs differ from traditional ratemaking principles by specifying rates or revenues for future years using forecasted data and information beyond the rate-effective year following a traditional rate case.²¹ For example, a traditional rate case sets rates tailored to the following 12-month period, but those rates will remain in effect until a new rate case is decided by the Commission. In contrast, a three-year MRP would set rates individually for the initial 12-month period as well as the following two years.

15. Beyond reducing (or eliminating) regulatory lag, MRPs have the potential to reduce regulatory costs and improve the regulatory process.²² Notwithstanding, the Commission recognizes that an MRP may not be suited for all utilities and several WG participants expressed concerns about the complexity, cost, and procedural burdens that may accompany implementation of an MRP.²³ This Order provides guidance regarding the content of an MRP application and describes the procedures that the Commission will use to process the application.

16. Pursuant to the Public Utilities Article, *Annotated Code of Maryland*, (“PUA”), the Commission has the authority to regulate all public services companies in Maryland, including establishing and setting the rates that utility companies are permitted to charge

²⁰ Letter dated January 22, 2020 from the Joint Exelon Utilities.

²¹ *Multi-Year Rate Plans and the Public Interest*, Ken Costello, Principal Researcher, Energy& Environment, National Regulatory Research Institute, Report No. 16-18, October 2016, at 1.

²² *Id.* at 16. Studies show that MRPs typically identify six benefits: (1) more predictable revenues for utilities, bolstering their financial health; (2) spreading the rate changes over a longer period; (3) more predictable rates for customers; (4) stronger performance incentives; (5) timely recovery of costs for capital projects; and (6) fewer general rate cases over time.

²³ Order No. 89226 at 2.

their ratepayers. Under PUA § 4-102, the Commission has the power to set a “just and reasonable rate of a public service company.” Under § 4-101, a “just and reasonable rate” is 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 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.

The Commission’s authority to expand its current use of AFORs or adopt other alternative rate structures is expressly provided by statute. In 1999, the Maryland General Assembly enacted PUA § 7-505(c)(1), which provides that the Commission “may approve alternative forms of rate regulations for an electric utility if the alternative form of rate regulation is determined to protect consumers, ensures reliability of the regulated utility services, and serves the public interest.”²⁴ While this statute does not expressly apply to Maryland’s natural gas utilities, the Commission finds that PUA § 4-102 grants the Commission the inherent authority to determine a just and reasonable rate for natural gas utilities using any method or approach that is in the public interest.

IV. THE MRP PROCESS

A. The Pilot

17. The Commission tasked the WG with several questions related to the timing and process of an initial MRP filing. As an initial matter, the WG reached consensus that

²⁴ *Id.* at 4.

filing of an MRP should remain optional and at the discretion of each public utility.²⁵ Some utilities expressed concerns about the complexity, cost, and procedural burdens of using an MRP. While the Commission determined in Order No. 89226 that a properly constructed MRP based on a historic test year and allowing up to three future test years can produce just and reasonable rates, it did not mandate the filing of an MRP by any utility.

18. The Staff proposals suggested that an initial MRP “Test Case” be filed by one utility,²⁶ and that no other utility could file an MRP until the completion of the three-year, rate-effective period and a “lessons learned” process.²⁷ Thereafter, Staff suggested that utilities could begin filing MRPs, one at a time, at five-month intervals. Staff believes that such time periods are necessary to ensure the procedural timelines and filing requirements are sufficient prior to more utilities filing MRPs.²⁸

19. The WG could not reach consensus on any of these proposals. Apartment and Office Building Association of Metropolitan Washington (“AOBA”) and OPC proposed to treat each utility’s first MRP as a “pilot” or “test case.” The Exelon Utilities proposed that up to three utilities be permitted to file MRPs in 2020. Columbia Gas and AOBA asserted that Staff’s proposals would result in utilities being required to file traditional rate cases while waiting on the outcome of the test case.²⁹ Other utilities claimed that “requiring utilities to file at certain intervals could be detrimental and increase regulatory

²⁵ Item 1, relating to forecasts that must be filed for subsequent years after the initial historic test year, Report at 2.

²⁶ Item 3-1, relating to the procedural timeline used for the initial MRP filed with the Commission, Report at 26.

²⁷ Item 3-1, relating to the procedural timeline used for the initial MRP filed with the Commission, Report at 26.

²⁸ Item 3-4, relating to how should utilities stagger filings of MRPs, Report at 30.

²⁹ Report at 26 and 30.

lag”³⁰ or may be illegal.³¹ The WG explored and considered numerous models for staggering rate cases, including looking at examples in Hawaii, Pennsylvania, and the District of Columbia.³²

20. In considering procedural mechanisms to reduce administrative burdens on the Commission and other interveners, Staff proposed that for an initial MRP filing a utility should voluntarily submit “[historic test year] data, forecasting data, and other materials in support of its application three months prior to the start of the 210-day procedural process.”³³ Staff suggested that the utility would set the effective date of the tariff at 120 days from the initial application date to allow for sufficient time for the parties to review data in the “novel”³⁴ format required by the MRP.

21. The WG did not reach consensus on Staff’s proposal for extending the timeline.³⁵ OPC and AOBA supported that timeline or a similar timeline (90 days), and advocated that the pre-filing requirements apply to each utility’s initial MRP. Potomac Edison (“PE”) claimed that extending the 210-day timeline was not lawful and that if Staff’s proposal is adopted it should only be applied to the first MRP. Other parties such as WGL, Chesapeake Utilities, Columbia Gas and the Exelon Utilities did not object to voluntarily providing some information prior to filing an MRP, but objected to the proposed 120-day period. As a solution, OPC also proposed “the use of PUA § 4-205, ‘Temporary Rates,’ as a way to extend the review period for MRPs.”³⁶ The Report notes

³⁰ *Id.* at 26.

³¹ *Id.*

³² *Id.* at 30.

³³ Item 3-2, relating to procedural actions to reduce the burden on non-utility parties to an MRP rate case, Report at 27.

³⁴ Report at 27.

³⁵ *Id.*

³⁶ *Id.* at 28.

that “the current statutory period already imposes difficulties in terms of time and labor and is untenable for MRPs.”³⁷ It was noted that PUA § 4-205 was used in Case No. 9092, a Pepco rate case, to set temporary rates up to one year.

22. The WG did reach consensus on the necessity of a “lessons learned” review following the initial MRP test case.³⁸ With general support by the WG, Staff proposed that a lessons learned period take place after the conclusion of the first MRP for each utility to discuss changes or modifications to the MRP process going forward. These would be informal sessions and Staff would subsequently file a report detailing recommendations. The Report indicates that Staff anticipated a “lessons learned” review would only apply to the initial MRP, while other stakeholders (i.e., AOBA, Exelon, and Chesapeake Utilities) supported a review of each utility’s first MRP filing.³⁹

Commission Decision

23. The Commission agrees with the WG that the filing of an MRP would be entirely optional, and no utility is required to use an MRP in lieu of a traditional base rate case.⁴⁰ PUA §§ 4-203 and 7-505 govern the timing of rate case filings. The Commission agrees with those stakeholders in the WG that suggested that “the timing of rate cases, traditional or MRP, must be determined on the individual utility’s needs and obligations to provide safe and reliable service.”⁴¹ For purposes of the pilot MRP, any additional information or time the Pilot Utility chooses to provide would be particularly valuable. The Commission finds that OPC and AOBA’s timeline of 90 days would be a reasonable

³⁷ *Id.*

³⁸ Item 3-3, relating to stakeholder opportunity to comment after the initial MRP proceedings, Report at 28.

³⁹ Report at 29.

⁴⁰ *Id.* at 2.

⁴¹ *Id.* at 26.

period of time for pre-filing requirements to be met. Nonetheless, although helpful to the parties, this would be a voluntary process at the discretion of the utility.

24. The Commission finds that establishing a Pilot to consider the initial MRP pursuant to this Order will allow this first MRP filing to serve as an opportunity to gather valuable lessons learned. However, the Commission does not have the statutory authority to require utilities to stagger their filings of MRPs or to prevent a utility from filing an MRP at any time. Thus, the filing of the initial MRP under this Pilot will not prohibit another utility from filing a rate case before the issuance of an order in the initial case. However, the Commission may exercise its statutory authority to reject or modify a proposed MRP if it finds that the application is not “consistent with the public good” or the MRP “is not in the public interest” at the time it is filed.⁴²

25. Regarding the proposal to conduct a “lessons learned” review, the Commission finds that this proposal by Staff would be helpful to inform future MRP filings, although participation by other stakeholders is voluntary. Staff’s proposal suggests that in the case of multiple utilities being approved for MRPs, there should be a lessons learned review for each utility after its initial MRP. Additionally, the Commission accepts the proposal that Staff file a report in Case No. 9618 detailing recommendations to improve MRP filings and the review process.

26. OPC suggests using “Temporary Rates” as a way to extend the review period for MRPs.⁴³ Under temporary rates, the utility’s full rate increase would go into effect, subject to refund, until the Commission issues its final order. At the issuance of a final order, a refund of the increase in excess of what the Commission allows in the final order

⁴² PUA §§ 4-101 and 7-505(c).

⁴³ Item 3-3, Report at 28.

would be returned with interest. Under this scenario, customers would experience an increase in rates to the full requested level in the application, a reduction in rates to the Commission-authorized just and reasonable level, a further reduction when the refund is approved and returned to customers, a return to the just and reasonable level, and then a transition to the second-year rates of the MRP. However, the primary benefits of an MRP are rate stability over time and reduced administrative burdens, both of which are incompatible with the use of temporary rates to extend the rate case review period. For purposes of this Pilot, the Commission rejects OPC's recommendation to preemptively rely on temporary rates.

B. Filing an MRP

27. The WG prepared and recommended that the Commission adopt a list of utility filing requirements and further recommended that it reconvene, after the Commission issues this Order, to formulate filing requirements related to any true-up process approved by the Commission.

28. In addition to recommending filing requirements, the WG was tasked with proposing methods for reducing information asymmetries between the parties. The parties generally agreed that the recommended filing requirements would reduce the information asymmetries associated with using utility forecasts to set rates.⁴⁴ The WG also reached a general, but not unanimous, consensus that utilities should provide all necessary information in a clear manner at the onset of an MRP to reduce discovery

⁴⁴ Item 5, relating to recommendations on requirements to decrease information asymmetries between utilities and affected parties, Report at 37.

requests.⁴⁵ The WG also reached consensus on several template exhibits that it recommends that the Commission adopt for MRP filings. Those exhibits appear as Attachment 2 to the Report.

29. The WG addressed whether stakeholders could access data and proprietary modeling software used by the utility to forecast inputs to its MRP,⁴⁶ but was unable to reach consensus on the best approach to allow interested parties to access software used by utilities to create the utility's forecasts. The utilities raised concerns over both the availability of licenses for using third-party software as well as security concerns over allowing stakeholders access to utility internal programs. The WG agreed that, to the extent a utility incurs costs in obtaining and maintaining software licenses for use by parties in an MRP rate case, those costs could potentially be recovered as eligible rate case expenses.

30. In identifying ways to make the utilities' planning process more transparent and open to the Commission and ratepayers, the WG considered what information utilities should provide to the public.⁴⁷ The goal of these discussions was to increase transparency regarding infrastructure planning and forecasted rates, and to determine whether informational sessions and additional public hearings are necessary. Staff proposed that the utility publish information on its website providing details regarding its major planned projects, including information relating to the project's cost, construction

⁴⁵ Item 5-1, relating to what a utility should file at the onset of an MRP to reduce asymmetries of information and 5-3, relating to the need for a standardized filing format beyond the basic filing requirements, Report at 37 and 40. It appears that all parties agreed on the principle of providing extensive, standardized filing data, but not the specifics beyond the proposed templates.

⁴⁶ Discussed in Items 5-2, relating to the baseline level of information the utility should file to support its historic test year cost of service and 5-5, relating to what requirements should be placed on the utility to ensure other parties have the tools to evaluate the utility's forecasts, Report at 38-43.

⁴⁷ Items 4-1, 4-2, and 4-3, all relating to various aspects of providing adequate information to ratepayers, Report at 32-36.

timeline, and expected customer benefits. In addition, Staff proposed informational meetings during the pendency of the initial MRP⁴⁸ and additional public hearings during each year of the rate-effective period.⁴⁹ The WG reached general consensus in favor of Staff's proposals and agreed that utilities would provide customers with an explanation of (1) what an MRP is, (2) what the utility is requesting in its MRP and how it translates into a bill impact, and (3) the major drivers of rate charges with some details of the category spend level. It was generally agreed that the utilities would each determine the most cost-effective and efficient method to communicate the information to customers. While the WG reached consensus on maintaining the existing public hearing processes, there was disagreement over whether additional hearings are necessary during the rate-effective period.

Commission Decision

31. The Commission provides the following modifications to the proposed filing requirements:

- a. On page 16 of the Report, the WG proposes that utilities file five-year cost forecasts but notes, in footnote 18, that Columbia Gas proposed that the requirement be for a three-year forecast, rather than five years, to align with the three-year duration of an MRP. For the Pilot, the Commission finds that a filing that includes cost forecasts that at least covers through the end of the MRP is sufficient.
- b. On page 18 of the Report, the WG uses the term "capital expenditures." However, on page 24 of the Report, the WG uses the term "construction expenditures." The Commission understands that "construction expenditures" are a subset of "capital expenditures."

⁴⁸ Report at 32 and 34.

⁴⁹ Item 4-3, Report at 35.

- c. On page 18 of the Report, the WG uses the term “negative attributes.” The Commission understands this refers to items – such as regulatory liabilities, accumulated depreciation, and accumulated deferred income taxes – that are subtracted from total rate base to arrive at net rate base.
- d. On page 19 of the Report, the WG (in sub-item 7) proposes that utilities file historic “actual capital expenditures related to maintenance of the system of the utility’s infrastructure over the last three annual periods,” while sub-item 9 proposes that utilities file “actual infrastructure projects constructed during the HTY and over the four prior 12-month periods.” Since these two items are related, the Commission finds for consistency and transparency that the filing requirements listed in both sub-items should be provided for the last three annual periods in the Pilot Utility’s application.

32. The Commission accepts the WG recommendation related to Proposed Filing Requirements for the Pilot MRP and finds them reasonable, subject to the determinations above.

33. For the Pilot Utility application, the Commission declines to require strict compliance with the WG’s recommended schedule and templates as specified in Attachments 1 and 2 to the Report. However, use of standardized exhibits for the Pilot MRP will provide for a more orderly review and reduce delays and disputes over discovery.

34. In any rate case, stakeholders must have access to the data and methods relied on by a utility to develop and support its case. The Commission is cognizant of the concerns raised by the utilities and the need for further effort by the parties to work with vendors to develop secure and cost-effective methods for information sharing. The Commission finds that the Pilot Utility must work with stakeholders to develop cost-effective protocols to permit stakeholders to fairly respond to and critique the evidence presented in support of the Pilot Utility’s case.

35. Currently, utilities that file traditional rate cases have an obligation to provide sufficient information to the public to understand the rates requested. The Commission will require no less from the Pilot Utility and in fact will require more. MRP rates will be a first-time experience for all customer classes within the Pilot Utility's service territory. The majority of consumers will have no experience with the potential impacts to their bill, or the benefits the Commission has identified. Accordingly, the Commission accepts the WG's recommendations that utilities be permitted to notify customers of information related to MRPs in the most cost-effective and efficient method. At a minimum, the Pilot Utility should therefore provide in a clear and concise manner:

- a. An explanation of the MRP filing and the differences between it and a traditional rate case;
- b. Detailed benefits that consumers should expect as a result of the Pilot Utility's participation and filing of a MRP;
- c. Information regarding the reasons for future changes in rates;
- d. Utility contact information for additional questions or concerns; and
- e. Additional information as necessary and as determined by the Commission or the Pilot Utility.

36. Finally, the Commission will not require the Pilot Utility to conduct additional public hearings beyond those required in existing rate case procedure.

C. Forecasting

37. The Commission tasked the WG with making recommendations regarding utility forecasts. First, the Commission requested guidance on the basis for forecasting, the necessity of standardization, and who should bear the risks of inaccurate forecasts.

Second, the Commission requested specific recommendations on how to treat various elements of the rate case including how to treat additions to rate base, the cost of capital, and the cost of service study or studies.

38. As an initial issue, the Staff proposed that the basis for the forecasts and projections of an MRP filed with the Commission should be a historic test year using 12 months of available data including known Commission-approved adjustments.⁵⁰ The WG agreed with Staff's proposal and recommended its adoption.

39. The WG also addressed standardization in forecast methodology and data production.⁵¹ The WG reached a general consensus that a standardized method of forecasting is not required, but each utility must use a consistent method throughout a case, be specific about the method used, and ensure that other parties are educated and have the technical capabilities needed to evaluate the forecasts.⁵² In addition, the WG reached a general consensus as to the standardization of forecast data produced.⁵³ The utilities generally agreed to provide historic billing data, explanations of steps used to develop forecasts, weather-related data, regression equations, and statistical tests to demonstrate the significance of the models, all of which should help evaluate the validity of the forecasts without purchasing software licenses for stakeholders. Depending on the type of forecast involved, the utilities agreed to provide the following:

- (1) for discrete forecasts, the utility will provide five years of historic data for each discrete historic forecast, if available;

⁵⁰ Item 1-1, relating to forecasts that must be filed for subsequent years after the initial historic test year, Report at 2.

⁵¹ Item 5-4, relating to standardized methods for stochastic and discrete forecast, Report at 41.

⁵² There was concern among the stakeholders with the requirement that utilities provide access to third-party software used for forecasting, addressed in more detail in Item 5-5, Report at 41-43.

⁵³ Item 5-3, discussed above, where all parties agreed on the principle of providing extensive, standardized filing data, but not the specifics beyond the proposed templates, Report at 40-41.

- (2) for stochastic forecast⁵⁴ billing determinants, the utility will provide at least ten years of monthly data, and if that is not available, explain why; and
- (3) for all other stochastic forecasts, the utility will provide statistically significant historical data used as the basis for the forecast.⁵⁵

40. The WG came to a general consensus that the risks of inaccurate forecasts should remain on the utility.⁵⁶ However, the WG stakeholders offered different recommendations on how to accomplish this goal. Specifically, the stakeholders disagreed as to whether over- or under-collections should be treated symmetrically or asymmetrically. OPC asserted that if all expenses and costs are true-up annually, utilities do not bear any risk because an annual true-up would remove any consequences to the utilities resulting from exceeding their forecasts.⁵⁷ OPC also noted that where cost forecasts have been used in MRPs elsewhere, “only asymmetrical true-ups are allowed to return under-spend to ratepayers.”⁵⁸ The Report notes that Staff “contends its proposal to return any over-collection with carrying costs, but to collect under-recovery from ratepayers, after a prudence review, without carrying costs puts the risk of forecasting errors on the utility.”⁵⁹ The Report also states that “[a]n over-forecast would carry a penalty for the utility and an under-forecast delays recovery, creating an incentive to avoid under forecasting. The lack of a carrying charge on over-recovery and a carry

⁵⁴ The Report defines “stochastic forecasts” as “elements that are not under the control of the company, for example, future billing determinants or weather.” Report at 14.

⁵⁵ Report at 43.

⁵⁶ Item 7-2, relating to which party bears the risk of forecasting errors, Report at 56-57.

⁵⁷ Report at 56.

⁵⁸ *Id.* at 56-57, specifically referencing New York and Minnesota.

⁵⁹ *Id.* at 57.

charge on under-recovery shifts the risk of forecasting errors from the utility to ratepayers.’⁶⁰

Commission Decision

41. For purposes of this Pilot, the Commission accepts the WG consensus that the Pilot Utility forecasts should be based on a 12-month historic test year. As noted in the Report, if the Pilot Utility were to file an MRP early in 2020, the filing could be based upon a historic test year consistent with the 12-month period ended December 31, 2019.⁶¹ The Commission also accepts the proposal that a bridge period would be included in the MRP filing to link the end of the historic test year with the first year of forecasted rates under the Pilot MRP.⁶²

42. The Commission will not require the Pilot Utility to use a particular method of forecasting but the Pilot Utility should be consistent throughout its MRP filing. A single definition of statistical significance may not be possible for every case; however, the Commission expects the parties to work together as early as possible to keep disagreements over data from compromising the review of the Pilot MRP case.

43. The Commission accepts the WG recommendation that the Pilot Utility should bear the risk of forecasting errors.⁶³ Given the risk of inaccurate forecasts as well as the reality that the utility has both greater information than other stakeholders and greater control over its own costs, it is imperative that the utility have strong incentives to develop accurate forecasts and then plan appropriately to stay within the authorized

⁶⁰ *Id.*

⁶¹ Report at 2.

⁶² *Id.*

⁶³ Item 7-2, relating to the appropriate party to bear the risk of forecasting errors, Report at 56.

revenue requirement while also not under-investing to the detriment of safe and reliable utility service.

i. Planned Capital Spending

44. For capital spending the Staff proposed that “forecasts should include a list of capital investments; including a project list by year and date.”⁶⁴ The WG did not reach consensus on this item. The Report indicated that several parties took issue with what level of capital expenditure or project level detail should, or could, be provided for each of the forecasted years of an MRP. Several parties supported the proposal, suggesting that submission of capital investment lists by year and completion date was the best way to review a utility’s proposed capital investments.⁶⁵ Utilities claimed that information at the project level does not exist three years into the future; rather, specific projects are generally forecasted one year ahead. AOBA “expressed concerns that a utility’s forecasted capital spend could become an authorized level of spend and that annual project-detail filings throughout the MRP, could preclude review by the Commission and stakeholders of the projects causing the projected revenue increase.”⁶⁶ PE proposed determining the reasonableness of a utility’s project- level detail on a case-by-case basis, while WGL indicated its five-year budget plan would include detailed information for year one of the MRP, and for years two and three projects in excess of \$5 million could be identified.⁶⁷

45. As a compromise, Staff proposed that the utility provide in its initial MRP filing a project list for the first fully-projected year, and a program-level detail for the subsequent

⁶⁴ Item 1-2, relating to the level of detail for forecasting capital expenditures, Report at 3.

⁶⁵ Report at 3.

⁶⁶ *Id.* at 4.

⁶⁷ *Id.*

years of the multi-year plan, including project-level information for the larger capital investments (estimated to be at least \$5 million dollars).⁶⁸ The Report noted that Staff provided a chart demonstrating what an MRP lifecycle would look like in terms of the information requirements for a utility's project lists. Ultimately, the Report indicates that the parties came to general consensus on the timing of project-level updates during the duration of an MRP.

Commission Decision

46. Providing sufficient data on planned capital spending at the filing stage of an MRP is essential to allowing transparency into the utility planning process, which the Commission identified as a key benefit of an MRP.⁶⁹ The Commission recognizes that utilities have varying abilities to provide forecasting at the project-level as part of an MRP application, therefore, for purposes of this Pilot, we do not reach a decision on this point for all companies at this time. However, for this Pilot, the Commission finds that the MRP application should include project-level data for the first year of the Pilot's rate-effective period, and program level data for each additional year of the MRP. In addition, the Pilot MRP application should include project-level data for large capital expenditures for each year of the Pilot MRP. The WG proposed either a \$1 or \$5 million threshold for defining "large capital expenditures." The Commission finds that these thresholds are not sufficiently tailored to the individual electric and natural gas distribution systems in Maryland. At this time, the Commission does not know which of Maryland's utilities will participate as the Pilot Utility. Accordingly, for the purposes of the Pilot Utility MRP filing, the Commission defines large capital expenditures as \$1 million or 0.5% of

⁶⁸ *Id.*

⁶⁹ Order No. 89226 at 54.

the Pilot Utility’s annual capital budget, whichever is less. This filing data should provide sufficient insight into how capital expenditures will impact the forecasted rates of the MRP and visibility into the Pilot Utility’s distribution planning process. The Commission also agrees with Staff’s characterization that “[t]he proposed project list and individual project costs would not be pre-approved by the Commission but would serve as a guide for prudence both in terms of the individual projects the utility elected to construct and the actual costs of the individual projects” when the final reconciliation is performed.⁷⁰ The Commission anticipates that this Pilot may show that moving these projects into rate base during the duration of the MRP will reduce regulatory lag and bring recovery closer in time to when projects become used and useful for customers.

47. In the absence of project-level forecasts for later years of the Pilot MRP, review of project-level details throughout the course of the rate-effective period is necessary. The Commission agrees with the parties that the Pilot Utility should file updated project list data no less than 60 days before the end of the first and second annual periods. Additionally, the Commission adopts Appendix 2, derived from Staff’s chart⁷¹ depicting “how the lifecycle of an MRP would appear in terms of information requirements for a utility’s project list.”⁷²

ii. Cost of Capital

48. Regarding forecasting a return on equity (“ROE”), Staff’s proposal states that “ROE should be set for the duration of the MRP.”⁷³ The Report indicates that most parties agreed the ROE should be set for the duration of the MRP to avoid re-litigating

⁷⁰ Report at 5.

⁷¹ Attachment 1 to the Report; Appendix 2 to this Order.

⁷² Report at 5.

⁷³ Item 1-3, relating to forecasting the Return on Equity, Report at 5.

the issue during the pendency of the plan or during an annual reconciliation. However, it was noted in the Report “that this provision would not apply to the electric cooperatives as their rates are not based upon ROE or capital structure, but rather the cooperatives earn a financial return based on their debt-based Rate of Return (“ROR”) or [Times Interest Earned Ratio (“TIER”)] on which underlying rates are based.”⁷⁴ The Report also stated that Columbia Gas disagreed with the majority and recommended that the ROE be reevaluated on an annual basis as the capital markets can be volatile from year-to-year. Columbia Gas cited the economic recession in 2008-2009 in arguing that investor sentiments toward risk and required returns can change rapidly, thereby affecting long-term capital costs. In addition, Staff recommends that an “ROE band is not required at this time.”⁷⁵ The Report notes that some parties believed that ROE bands would be better considered under a performance-based plan and therefore recommended that the Commission take no action on this item at this time.

49. Regarding forecasting the capital structure, Staff’s proposal states that “capital structure should be set for the duration of the MRP.”⁷⁶ The Report notes that the majority of parties believed the capital structure should be determined during consideration of an MRP rate case and not revisited until the next MRP or rate case filing. Similar to its ROE position above, Columbia Gas disagreed with the majority and recommended that the capital structure be set for the first year and then updated for actuals annually in conformity with annual updates to ROE.

⁷⁴ Report at 5.

⁷⁵ Item 1-6, relating to ROE bands, Report at 7.

⁷⁶ Item 1-4, relating to forecasted capital structures, Report at 6.

50. Regarding capital structure, Staff proposed that the “capital structure should be set on a permanent capitalization basis (only common equity and long-term debt).”⁷⁷ The Report indicates that a majority of the stakeholders agreed that the Commission’s current practice of setting capital structure on a total capitalization basis may cause issues due to the difficulty inherent in forecasting short-term debt. Instead, the WG agreed that setting the capital structure on a permanent capitalization basis may be preferable.

Commission Decision

51. One of the key benefits of an MRP is rate stability for both the utility and customers during the rate-effective period. Another benefit is reducing regulatory lag for utilities. A well-designed MRP must ultimately balance rate stability and rising utility costs and revenues. The Commission finds that setting a capital structure based on permanent capitalization for the duration of the rate-effective period will produce stable rates. All parties but one⁷⁸ agreed that forecasts of ROEs and capital structures would be inappropriate. For the Pilot Utility, the Commission agrees that the ROE and capital structure will be set for the duration of the Pilot MRP. Recommendations to reevaluate or reconcile these elements every year resemble the elements of a formula rate, which the Commission declined to pursue in Order No. 89226. The Commission found that formula rates, with yearly reevaluations and reconciliations, do not address the regulatory lag issue and have the tendency to shift financial risks toward customers and reduce incentives for utilities to control costs. However, the requirement that the Pilot Utility make an annual informational filing and the off-ramp discussed below will provide

⁷⁷ Item 1-5, relating to setting a capital structure based on permanent capitalization, Report at 6.

⁷⁸ Columbia Gas did not agree.

opportunities for the Commission to address the impact of any extraordinary events on utility operations.

52. Finally, the Commission takes no action on the proposal to establish ROE bands at this time. While the Commission agrees that ROE bands may be an appropriate tool in designing utility incentives under PBR, the Commission will await the WG's upcoming recommendations regarding PBRs before considering the reasonableness of ROE bands.

iii. Cost of Service Study

53. For the Cost of Service Study ("COSS"), Staff's initial proposal was that "COSS should be historic and set for the duration of the MRP."⁷⁹ The Report indicates that the stakeholders came to a general consensus on Staff's proposal as it relates to a Class Cost of Service Study ("CCOSS"). However, OPC indicated the CCOSS should be set based on the historic test year and form the basis for the forecasted rates, which should be adjusted proportionally within each forecasted year. All parties agreed that the methods applied to the COSS should be developed on a case-by-case basis.

54. The WG was unable to reach consensus on the treatment of the Jurisdictional Cost of Service Study ("JCOSS"). The WG recommended that the Commission must determine whether allocation factors must be set at the beginning of an MRP and remain unchanged for the duration of the MRP, or to allow utilities to propose annual updates to JCOSS allocation factors. Staff proposed treating the JCOSS in the same manner as the CCOSS. The Exelon Utilities and Columbia Gas argued that jurisdictional allocations, which are different than those in the CCOSS, should mirror a utility's spending, and thus should be allocated each year. According to these parties, not permitting adjustments of

⁷⁹ Items 1-7 and 1-8, relating to forecasting and methodology for the COSS, Report at 7-8.

forecasted data may result in an over- or under-recovery of costs between jurisdictions. Columbia Gas specifically recommended that the results for an Allocated Cost of Service Study, reflective of the first-plan year's revenue requirements, be used as a guide to set class revenue allocations for the duration of the multi-year rate plan. AOBA argued JCROSS should be examined separately for each year in a utility's initial MRP filing, and that the JCROSS should be projected separately for each year in that filing.

Commission Decision

55. The JCROSS informs a determination of which jurisdictions are responsible for which utility costs. The class COSS then allocates the necessary expenses and revenues across the various customer classes. Currently, Cost of Service Studies (both class and jurisdictional, as necessary) are developed by each utility and reviewed on a case-by-case basis. In addition, the rates resulting from the COSS remain in effect, without change, through the rate-effective period and until the next rate case is completed. The Commission agrees with the WG recommendation that the COSS methods should be developed on a case-by-case basis and that both the class and JCROSS should be based on historic data and set for the duration of the MRP. This practice is currently used to determine rates and should continue under the Pilot Utility MRP.

iv. Billing Determinants and the BSA

56. There was general consensus among the WG that forecasted billing determinants should be used and that a utility should also continue to utilize a bill stabilization adjustment ("BSA") or similar mechanism⁸⁰ to true up revenues for actuals throughout an

⁸⁰ This could include the weather normalization adjustment ("WNA") or revenue normalization adjustment ("RNA").

MRP.⁸¹ Staff’s initial position was that “the BSA should remain at least until PBRs are instituted.” The WG recommended that the Commission should determine whether the continuation of the BSA or similar mechanism(s) is reasonable and feasible within an MRP, and, if so, whether the mechanism should be uniformly applied to all utilities or applied on a case-by-case basis.

Commission Decision

57. Billing determinants are essential to determining how the revenue requirement translates into customer rates. In transitioning to an MRP that will use projections to inform rate base and spending, the use of projected or forecasted billing determinants is reasonable. As such, the Commission accepts the WG recommendation to use forecasted billing determinants and will require the Pilot Utility to do so in its MRP application. Historically, the BSA, WNA, and RNA have served important functions by smoothing the impacts of weather on utility revenues and eliminating utility disincentives for energy efficiency. The Commission finds that continuing the use of BSA and similar mechanisms for the Pilot is reasonable and will assist in providing some familiarity for consumers. However, the Pilot Utility may not utilize these mechanisms to return or collect reconciliation revenues at this time.

D. “Stay Out” and “Off Ramp” Provisions

58. The WG reached general consensus in favor of Staff’s proposal that a utility that files an MRP would be prohibited from filing another base rate case for the duration of the plan.⁸² However, the WG also reached general consensus that the Commission

⁸¹ Item 1-9, relating to the use of forecasted billing determinants, Report at 8-9

⁸² Item 8, relating to “stay out” provisions, Report at 63.

should allow for an approved MRP to be reviewed upon a petition by the utility or a stakeholder based on a major change.

Commission Decision

59. The Commission agrees with the WG recommendation that the imposition of a “stay out” provision is necessary to achieve the policy goals that support the use of MRP rate cases. However, the Commission does not agree with Staff’s proposed timeline. Rather, the Pilot Utility may not file a new rate case during the rate-effective period of the Pilot MRP where the proposed new rates would, assuming a contested rate case and a Commission-granted extension, take effect during the effective period of the existing MRP. The Commission also finds it necessary to prevent MRP rates from automatically extending beyond the authorized duration of Pilot MRP. Accordingly, the Pilot Utility must file a new rate case at least 210 days prior to the conclusion of the authorized Pilot MRP period. The new rate case must have an effective date that would take effect immediately at the close of the final year of the Pilot MRP. If the Pilot Utility fails to do so, the Commission will initiate rate proceedings pursuant to its own authority and will order new rates to take effect upon the end of the authorized duration of the Pilot MRP.

60. The Commission agrees with the WG that a “stay out” provision should be subject to an “off ramp” in the event of extraordinary circumstances outside the control of the utility that call into question whether the existing rates are just and reasonable or threaten the fiscal solvency of the utility. Such situations may include, but are not limited to: changes in law, natural disasters, cyber or terror attacks, major economic events, or other circumstances that would warrant the Commission’s intervention to modify or terminate the MRP. The Commission directs the Pilot Utility to incorporate the concept

into its MRP application. The Commission will address the specific circumstances and the appropriate remedies on a case-by-case basis.

E. Forward-Looking Surcharges

61. The WG did not reach consensus on the continued necessity of forward-looking surcharges.⁸³ The Report notes that STRIDE was the focus of discussion, as Staff proposed that utilities that file an MRP should not be permitted to collect a forward-looking surcharge. The Exelon Utilities, Columbia Gas, and WGL asserted that a STRIDE surcharge can be reset within an MRP and that STRIDE-related projects could be moved into rate base in each year of an MRP as part of the reconciliation, which they considered to be a base rate case in itself. WGL argued that a base rate case is required by PUA § 4-210(g)(1)(ii)(2) to move STRIDE-related projects into rate base.

Commission Decision

62. The Commission finds that STRIDE is defined in statute and therefore the Commission cannot restrict a utility from filing for a STRIDE surcharge. The Commission recognizes the STRIDE surcharge may play an important role under a Pilot MRP as the combination of STRIDE and an MRP could significantly reduce regulatory lag and allow the Pilot Utility to pursue investments necessary to ensure safe and reliable electric service. However, STRIDE investments can only be moved into rate base during a full base rate case (whether traditional or an MRP) in accordance with PUA § 4-210(g)(1)(ii)(2), and not on an annual basis during the course of an MRP rate-effective period.

⁸³ Item 1-10, relating to relating to the continued use of revenue stabilization mechanisms, Report at 9.

F. Reconciliation

63. The WG members were unable to reach consensus on a general structure for a reconciliation process, although they did reach consensus on some questions related to discovery and financial mechanics.

64. Staff proposed an MRP annual “true-up” reconciliation modeled on the make-whole provision in PUA § 4-207. The proposed reconciliation process would be similar to STRIDE filings and addressed at an Administrative Meeting. Staff’s proposed reconciliation mechanism would consider all costs and revenues “with all revenue being trued-up monthly via a revenue normalization-type mechanism (a BSA / RNA mechanism used by most utilities), [and any] differences between projected and actual components would be reconciled, and the prudence of projects in rate base would be reviewed.”⁸⁴

65. The Report notes that most utilities favor Staff’s approach, under which the Commission would determine any over- or under-collections based on the difference between forecast and actual revenue requirements. However, the utilities argued that reconciliation should be symmetrical with both over- and under-recovered revenues earning interest as the authorized ROR.⁸⁵ Exelon proposed a 90-day process that would employ a rider to maintain the MRP’s rate structure and isolate the inclusion of any reconciliation.

66. AOBA and OPC opposed “a true-up of all costs and revenues, and asserted utilities should be able to manage operations in accordance with revenue levels derived from rates.” Specifically, OPC recommended “that as part of a rate plan with rates based

⁸⁴ *Id.* at 53.

⁸⁵ *Id.* at 54.

on historic data and an index, utilities could be permitted to keep any excess as an efficiency incentive.”⁸⁶ OPC also asserted that allowing utilities to annually true-up revenues and costs would resemble a formula rate, which was rejected by the Commission in Order No. 89226, and which the Commission explained would “shift financial risks toward customers, . . . curtail thorough reviews of a utility’s costs, and reduce[] incentives for utilities to control costs.”⁸⁷ The Report also notes that some stakeholders assert that “annual reconciliations would essentially create annual rate cases and erase any perceived benefit of rates filed pursuant to an MRP three-year plan.”⁸⁸ Specifically, “OPC emphasized annual reconciliations should be limited to those costs that are difficult to forecast, *i.e.*, recurring pass-through or mandated costs; one-time extraordinary costs; unusual, large capital investments; or downward reconciliation for all capital costs. Such a process could simplify the true-up process, and Staff noted a limited true-up could present some benefits.”⁸⁹

67. Based on the contemplated reconciliation process, the WG considered the types of performance data that should be provided at the time of the annual true-up⁹⁰ and whether proceedings should have an ongoing discovery requirement for the duration of the rate-effective period.⁹¹

68. On the question of initial filing requirements for a reconciliation, the WG stated that in light of the members’ disagreements on how reconciliation should be structured, the question of filing requirements should be deferred until after a Commission order

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Item 6-6, relating to types of performance data in the annual true up, Report at 50.

⁹¹ Item 5-6, relating to an on-going discovery requirement, Report at 43-45.

clarifying the reconciliation process.⁹² The WG came to general consensus that all utilities would provide FERC-level account information available at the time of filing and that capital data would be supplied at the project level, with the understanding that the information may not be final and could change.⁹³

69. On the question of ongoing discovery, the WG was unable to reach consensus. The utilities opposed such a requirement because of the resource burden it would impose on the utilities and the Commission. OPC and AOBA favored ongoing discovery. In the event of a full annual reconciliation, OPC insisted on discovery, testimony, hearing, and briefs addressing the revenue requirement (but not other elements of a rate case) and argues that it would require at least 150 days for review.

70. The WG also considered whether a utility's books and records continue to be open and available for audit and investigation.⁹⁴ There was some disagreement by the utilities as to the practicality and efficiency of permitting unlimited discovery on all topics during the duration of an MRP. The WG came to consensus that utility books and records should remain available for the duration of the MRP to the extent they are already open pursuant to statute. The WG also recommended that utilities should file a mid-year report addressing completions and significant changes to capital projects as an early warning in advance of annual filing requirements. The WG left open the question of how mid-year reports would be reviewed or approved.

⁹² Report at 25, n. 21.

⁹³ Item 7-4, relating to necessary information at the annual true-up filing, Report at 58-59.

⁹⁴ Item 6-7, relating to whether utility books should remain open and available during an MRP, Report at 51.

71. The WG also generally agreed that extraordinary costs should be identified at an annual reconciliation and placed in a regulatory asset.⁹⁵ In addition, the parties generally agreed on the type of extraordinary costs (i.e., storm costs, security attacks, major event days, etc.) and that it was not necessary or possible to list all the costs that could qualify. Instead of attempting to identify the type of costs or specify an amount, the parties agreed that such costs be treated on a case-by-case basis.⁹⁶

72. Finally, the parties, with the exception of OPC, recommended the use of a rider to resolve any over- or under-collections.⁹⁷ The WG recommended a rider that is visible as a line item on a customer bill as a method to increase transparency for any changes to effective rates resulting from over- or under-recoveries determined during annual reviews.

73. Staff proposed to flow any reconciliation to customers using the revenue allocation method approved by the Commission as part of the MRP case and Exelon agreed with Staff's recommendation.⁹⁸ In turn, AOBA argued "the rate design set by the MRP should not be altered and that increases be applied equally to all charges for non-residential customers, i.e., an overall 3% increase would result in a 3% increase to the customer charge, demand charge, and volumetric charge."⁹⁹ Columbia Gas agreed in principle with Staff's proposal but suggested that "if rate mechanisms (*i.e.* WNA, RNA) are utilized along with an MRP, the utility would need to perform additional

⁹⁵ Item 7-3, relating to handling extraordinary costs in the annual true-up, Report at 57.

⁹⁶ Report at 57.

⁹⁷ Item 4-4, related to improving rate transparency, Report at 36-37.

⁹⁸ Report at 59.

⁹⁹ *Id.*

computations to ensure that the true-up to be flowed through rates is consistent with the original revenue allocation method.”¹⁰⁰

74. Staff proposed a potential cap to mitigate bill impacts as part of the annual reconciliation. AOBA, OPC, and Staff each proposed caps, varying between 3% and 9%, in excess of the distribution rate increase previously approved. Staff also suggested that any excess should become a regulatory asset, and AOBA opposed the use of a regulatory asset. The Report notes that Exelon and WGL agreed to a cap of 9% of distribution revenues on bill impacts due to the annual reconciliation. The WG recommended that the Commission address the question of a cap on a case-by-case basis and not set a uniform cap for all utilities.

Commission Decision

75. Staff’s reconciliation proposal is based on a single phrase within Order No. 89226.¹⁰¹ However, within the context of the entire paragraph, the Commission did not endorse an annual reconciliation of all capital and Operations and Maintenance (“O&M”) costs. In that paragraph, the Commission found that adjustments to reflect changes in the business environment, rather than changes in actual revenues and expenses, would be appropriate. The Commission also cited favorably to the Brattle Report and to other states with MRPs, none of which contain an annual reconciliation as proposed by Staff. In fact, the Staff proposal strikes the wrong balance by placing all of the risk on customers, and none on the utility, which is inconsistent with the Commission’s findings and with the consensus of the WG.

¹⁰⁰ *Id.*

¹⁰¹ Order No. 89226, at 54, notes that “[c]ombined with an annual true-up to actual expenses, an MRP provides added transparency with minimal risk to utility ratepayers.”

76. Further in Order No. 89226, the Commission stated that the record in PC51 demonstrated that MRPs could decrease administrative burdens on regulators as well as provide increased transparency. However, upon examination of the proposed annual reconciliation process, the Commission finds that annual reconciliations could cause increased administrative burdens on regulators and parties by effectively requiring a proceeding that resembles an annual rate case.

77. The Commission’s goal is to strike the delicate balance of achieving increased transparency and accountability from the utility while realizing the other benefits enumerated in Order No. 89226, including “shortening the cost recovery period, providing more predictable revenues for utilities and more predictable rates for customers, spreading changes in rates over multiple years, and decreasing administrative burdens on regulators by staggering filings over several years” as well as “more transparency into a utility’s planning process.”¹⁰²

78. To strike this balance, during the Pilot MRP, reconciliation of the Pilot Utility’s costs will be conducted by three distinct means: (1) an annual information filing, (2) a consolidated reconciliation and prudence review in a subsequent rate case, and (3) a final reconciliation and prudence review after the conclusion of the Pilot MRP rate-effective period.

79. First, within 90 days of the end of the first and second annual periods of the initial Pilot MRP, the Pilot Utility shall submit to the Commission an annual informational filing comparing forecasted data to actuals. Appendix 1 to this Order contains sample templates showing the minimum level of information, with associated back-up materials,

¹⁰² Order No. 89226 at 54.

that the Commission expects in such a filing. Following each annual informational filing, the Commission will allow non-utility parties 60 days to conduct discovery from the utility and provide written comments on the annual informational filing. If Staff, OPC, or another party demonstrates a significant disparity between revenues and expenses to the detriment of ratepayers, the Commission may hold a hearing and determine whether an adjustment of the revenue requirement and/or rates is appropriate. The Commission will decide on the necessity and scope of any further discovery on a case-by-case basis. If an adjustment is appropriate, the Commission will establish a rider. The Commission accepts the WG's recommendation that extraordinary costs could also justify Commission action as a result of the Pilot Utility's annual informational filing,¹⁰³ and that the appropriate method for accounting for such costs could be the use of a regulatory asset.¹⁰⁴ The Commission will address the specifics of each situation during the Pilot on a case-by-case basis. The Commission finds that this approach will allow for more transparency and accountability by the Pilot Utility and simultaneously achieve the benefits cited in Order No. 89226.¹⁰⁵

80. Second, as part of the rate case filed during the rate-effective period by the Pilot Utility, the Commission will conduct a consolidated reconciliation and a prudence analysis of all utility spending during the authorized duration of the effective Pilot MRP through the end of the designated historic test year with adjustments in accordance with

¹⁰³ The Pilot Utility is not restricted to petitioning for relief from the Pilot MRP under the "off-ramp" provision to the annual filing period, however, but may file for relief at any time.

¹⁰⁴ Items 7-3, Report at 57-58.

¹⁰⁵ Based on the Commission's intent to reduce administrative burdens on all parties, the Commission declines to require mid-year filings.

precedent. All adjustments and reconciliations will be moved into rate base as part of the new rate order on a case-by-case basis.

81. Third, within 120 days following the termination of the Pilot MRP and imposition of a new base rate Order, the Pilot Utility shall file a final reconciliation and prudence case for any investments and costs in the MRP period not previously reviewed for prudence and reconciled in the rate case.

82. In response to the WG's request to defer the question of reconciliation filing requirements until after this Order, if the WG believes that additional filing requirements are necessary (for either the consolidated rate case or the final review) it should provide its recommendations as part of the WG report on performance-based rates.

83. Other than the 60 day period associated with the annual informational filings, the Commission will not permit open-ended discovery throughout the Pilot MRP period. However, the Commission does accept the WG recommendation that Pilot Utility books and records should remain open pursuant to statute. While noting that the reconciliation process approved in this Order diverges in some respects from that proposed by the WG, the Commission finds that the possibility that under-collection could result in rate shock to ratepayers will be addressed within the Pilot.

84. As noted above, to ensure that the risks of improper forecasting remain on the Pilot Utility, and to encourage cost control, the Commission will adopt the asymmetrical method for returning over- and under-collections of prudent expenditures. For any over- or under-collection found during the final reconciliation at the conclusion of the Pilot MRP, the revenue difference shall be placed into a regulatory asset/liability and paid/repaid via a rider according to the authorized MRP rates previously in effect. The

time period for (re)payment shall be set on a case-by-case basis. In cases of over-collection, the carrying costs shall continue to apply during the period of any repayment to ratepayers. No carrying costs will be paid in cases of under-collection.

V. Commission Regulations

85. Staff has proposed a number of changes to COMAR 20.07.04.07 to amend the procedural rules for filing MRPs. The WG members agreed on the necessity of a future rulemaking proceeding but did not reach consensus in favor of Staff's proposal, and a number of participants favored initiating a rulemaking at a later time.

86. The WG, however, did reach consensus that the Commission should not create exemptions from COMAR metrics, such as SAIFI,¹⁰⁶ SAIDI,¹⁰⁷ customer call metrics, stray voltage metrics, and vegetation management for MRPs at this time.

Commission Decision

87. The Commission finds that new regulations are not necessary as this Order provides the minimum guidelines and requirements for a Pilot Utility filing. Therefore, the Commission declines to initiate a rulemaking proceeding at this time. However, the Commission will initiate a rulemaking approximately two years after the Pilot Utility's MRP tariffs become effective, after the Commission has sufficient experience with MRPs to inform the development of regulations that would apply in a uniform manner to utilities across the State.

88. For the same reason, the Commission will not create exemptions from COMAR for MRPs at this time.

¹⁰⁶ SAIFI refers to System Average Interruption Frequency Index.

¹⁰⁷ SAIDI refers to System Average Interruption Duration Index.

VI. CONCLUSION

The Commission finds that the use of a multi-year rate plan can be in the public interest as this alternative form of ratemaking has the potential to provide benefits for both electric and natural gas utilities and their ratepayers. Accordingly, an electric and/or natural gas utility may express their willingness to serve as the Pilot Utility, and file an MRP consistent with this Order.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners

Company Name
Multi-Year Rate Plan Revenue Requirement
For the Twelve Months Ended Month XX, Year

<u>Line</u>	<u>Description</u>	<u>Schedule Reference</u>	<u>MRP 1</u>	<u>MRP 2</u>	<u>MRP 3</u>
1	Rate Base	2	\$ 319,687,741	\$ 330,145,296	\$ 340,612,002
2	Rate of Return	2	<u>6.80%</u>	<u>6.80%</u>	<u>6.80%</u>
3	Required Income		\$ 21,738,766	\$ 22,449,880	\$ 23,161,616
4	Adjusted Operating Income	2	<u>\$ 16,235,289</u>	<u>\$ 10,352,080</u>	<u>\$ (4,679,790)</u>
5	Operating Income Deficiency (Excess)		\$ 5,503,477	\$ 12,097,800	\$ 27,841,406
6	Conversion Factor	See Below	<u>1.41665</u>	<u>1.41665</u>	<u>1.41665</u>
7	Revenue Requirement Deficiency (Excess) - Cumulative		<u>\$ 7,796,501</u>	<u>\$ 17,138,348</u>	<u>\$ 39,441,528</u>
8	Revenue Requirement Deficiency (Excess) - Annual		<u>\$ 7,796,501</u>	<u>\$ 9,341,847</u>	<u>\$ 22,303,180</u>
9	<u>Conversion Factor</u>				
10	Maryland State Income Tax		8.2500%		
11	Federal Income Tax		21.0000%		
12	Combined Income Tax Rate (SIT+(FITx(1-SIT)))		27.5175%		
13	Gross Receipts Tax		2.0000%		
14	PSC Assessment Rate		0.2124%		
15	Uncollectible Factor		0.4000%		
16	Conversion Factor (1 / ((1-Comb Tax)x(1-(GR+PSC+Uncoll)))		1.41665		
17	Conversion Factor % ((1-Comb Tax)x(1-(GR+PSC+Uncoll)))		70.589%		
18	<u>Capital Structure</u>		<u>Ratio</u>	<u>Cost</u>	<u>Wt'd Cost</u>
19	Long-Term Debt		50.00%	4.00%	2.00%
20	Common Equity		<u>50.00%</u>	9.60%	<u>4.80%</u>
21	Rate of Return		100.00%		6.80%

Company Name
Schedule 1x - Maryland Distribution - Annual Reconciliation Filing Example (For Illustrative Purposes Only)

(Thousands of Dollars)

Line No.	MRP 2020 - PROJECTION			MRP 2020 - ACTUAL			Adjusted Results Variance \$ (6) vs. (3)	Adjusted Results Variance %
	Average Unadjusted (1)	Ratemaking Adjustments (2)	Adjusted (3)	Average Unadjusted (4)	Ratemaking Adjustments (5)	Adjusted (6)		
1	Rate Base (Average Basis)							
2	Electric Plant in Service	\$ 22,377,741	\$ 569,957,741	\$ 553,000,000	\$ 23,000,000	\$ 576,000,000	\$ 6,042,259	1.1%
3	Accumulated Depreciation	\$ -	(150,000,000)	(150,500,000)		(150,500,000)	(500,000)	0.3%
4	Accumulated Amortization	\$ -	(1,500,000)	(1,550,000)		(1,550,000)	(50,000)	3.3%
5	Materials and Supplies	\$ -	5,000,000	4,950,000		4,950,000	(50,000)	-1.0%
6	Cash Working Capital	\$ 500,000	2,720,000	2,700,000	495,000	3,195,000	475,000	17.5%
7	Accumulated Deferred Income Taxes	\$ -	(125,000,000)	(124,000,000)		(124,000,000)	1,000,000	-0.8%
8	Prepaid Pension/OPEB Liab. (net of tax)	\$ -	14,000,000	14,250,000		14,250,000	250,000	1.8%
9	Customer Advances & Deposits	\$ -	(4,500,000)	(4,600,000)		(4,600,000)	(100,000)	2.2%
10	Service Company Assets	\$ -	-	-		-	-	0.0%
11	Regulatory Assets & Liabilities	\$ -	10,000,000	10,100,000		10,100,000	100,000	1.0%
12	Unamortized Credit Facility Costs	\$ -	-	-		-	-	0.0%
13	Other	\$ -	(990,000)	(995,000)		(995,000)	(5,000)	0.5%
14	Total Rate Base	\$ 22,877,741	\$ 319,687,741	\$ 303,355,000	\$ 23,495,000	\$ 326,850,000	\$ 7,162,259	
15								
16	Operating Income							
17	Operating Revenues							
18	Sale of Electricity (a)	\$ 83,159,831	\$ 83,159,831	\$ 91,000,000		\$ 91,000,000	\$ 7,840,169	9.4%
19	Other Revenues	\$ 7,838,033	\$ 7,838,033	7,800,000		7,800,000	(38,033)	-0.5%
20	Operating Revenues	\$ 90,997,864	\$ 90,997,864	\$ 98,800,000	\$ -	\$ 98,800,000	\$ 7,802,136	
21								
22	Operating Expenses							
23	Operation and Maintenance	\$ (4,879,198)	\$ 41,308,268	\$ 47,500,000	\$ (5,000,000)	\$ 42,500,000	\$ 1,191,732	2.9%
24	Depreciation	\$ (597,970)	16,718,486	17,500,000	(750,000)	16,750,000	31,514	0.2%
25	Amortization	\$ 0	1,934,730	2,000,000		2,000,000	65,270	3.4%
26	Other Taxes (a)	\$ (362,412)	10,353,678	10,500,000	(500,000)	10,000,000	(353,678)	-3.4%
27	MD Income Tax (a)	\$ 0	1,748,858	2,100,000	0	2,100,000	351,142	20.1%
28	Federal Income Tax (a)	\$ 0	4,056,199	5,200,000	0	5,200,000	1,143,801	28.2%
29	Total	\$ (5,839,580)	\$ 76,120,218	\$ 84,800,000	\$ (6,250,000)	\$ 78,550,000	\$ 2,429,782	
30	Allowance for Funds Used During Construction	\$ 0	1,202,731	\$ 1,250,000	\$ 0	1,250,000	47,269	3.9%
31	Interest on Customer Deposits	\$ 0	154,912	\$ 150,000	\$ 0	150,000	(4,912)	-3.2%
32	Operating Income	\$ 5,839,580	\$ 16,235,289	\$ 15,400,000	\$ 6,250,000	\$ 21,650,000	\$ 5,372,354	
33								
34	Return on Rate Base	3.50%	5.08%	5.08%		6.62%	1.55%	
35								
36	Less Weighted Cost of Long-Term Debt	2.00%	2.00%	2.00%		2.00%	0.00%	
37	Net amount available for common equity	1.50%	3.08%	3.08%		4.62%		
38	Common Equity ratio	50.00%	50.00%	50.00%		50.00%	0.00%	
39	Earned Return on Equity	3.00%	6.16%	6.15%		9.25%	3.09%	

Company Name

Rate-making Results - Distribution Only
Schedule 2x - Maryland Distribution - Annual Reconciliation Filing Example (For Illustrative Purposes Only) - O&M Expenses

	MRP 2020 - PROJECTION	MRP 2020 - ACTUAL	Adjusted Results Variance \$	Adjusted Results Variance %
DISTRIBUTION O&M EXPENSES				
1 Admin & General	1,000,000	1,550,000	550,000	55.0%
2 BSC	800,000	750,000	(50,000)	-6.3%
3 IT	1,200,000	1,150,000	(50,000)	-4.2%
4 Capacity Expansion - Electric	1,100,000	1,250,000	150,000	13.6%
5 Capacity Expansion - Gas	900,000	950,000	50,000	5.6%
6 Corrective Maintenance - Gas	5,000,000	4,950,000	(50,000)	-1.0%
7 Corrective Maintenance - Electric	500,000	550,000	50,000	10.0%
8 Corrective Maintenance - Substations	600,000	650,000	50,000	8.3%
9 Customer Operations	1,000,000	950,000	(50,000)	-5.0%
10 Fleet	950,000	1,075,000	125,000	13.2%
11 Gas Infrastructure Improvement (STRIDE)	750,000	575,000	(175,000)	-23.3%
12 New Business - Electric	650,000	675,000	25,000	3.8%
13 New Business - Gas	1,050,000	475,000	(575,000)	-54.8%
14 Other (Security, Legal, Strategy & Regulatory, External Affairs)	850,000	875,000	25,000	2.9%
15 Outdoor Lighting	650,000	675,000	25,000	3.8%
16 Public Relocation - Electric	450,000	475,000	25,000	5.6%
17 Public Relocation - Gas	350,000	475,000	125,000	35.7%
18 Real Estate and Facilities	200,000	225,000	25,000	12.5%
19 Storm	19,587,466	19,975,000	387,534	2.0%
20 System Performance - Electric	2,775,000	2,825,000	50,000	1.8%
21 System Performance - Gas	950,000	875,000	(75,000)	-7.9%
22 System Performance - Substations	4,775,000	4,950,000	175,000	3.7%
23 System Performance - Protection & Controls	100,000	100,000	-	0.0%
TOTAL DISTR OPERATION & MAINTENANCE EXPENSE - 27 UNADJUSTED	46,187,466	47,000,000	812,534	
Rate-making Adjustments				
1 RMA 1	(3,442,919)	(3,500,000)	(57,081)	1.7%
2 RMA 2	(892,660)	(1,000,000)	(107,340)	12.0%
3 RMA 3	(471,136)	(400,000)	71,136	-15.1%
4 RMA 4	(72,483)	(100,000)	(27,517)	38.0%
	(4,879,198)	(5,000,000)	(120,802)	
Total Distribution O&M Expense - Adjusted	41,308,268	42,000,000	691,732	

Company Name

Rate-making Results - Distribution Only
Schedule 3x - Maryland Distribution - Annual Reconciliation Filing Example (For Illustrative Purposes Only) - Capital

	MRP 2020 - PROJECTION	MRP 2020 - ACTUAL	Adjusted Results Variance \$	Adjusted ResultsVariance %
CAPITAL EXPENDITURES				
1 Admin & General	1,000,000	2,001,000	1,001,000	100.1%
2 BSC	800,000	749,000	(51,000)	-6.4%
3 IT	1,200,000	1,150,000	(50,000)	-4.2%
4 Capacity Expansion - Electric	1,100,000	1,250,000	150,000	13.6%
5 Capacity Expansion - Gas	900,000	950,000	50,000	5.6%
6 Corrective Maintenance - Gas	5,000,000	4,950,000	(50,000)	-1.0%
7 Corrective Maintenance - Electric	500,000	550,000	50,000	10.0%
8 Corrective Maintenance - Substations	600,000	650,000	50,000	8.3%
9 Customer Operations	1,000,000	950,000	(50,000)	-5.0%
10 Fleet	950,000	1,075,000	125,000	13.2%
11 Gas Infrastructure Improvement (STRIDE)	750,000	575,000	(175,000)	-23.3%
12 New Business - Electric	650,000	675,000	25,000	3.8%
13 New Business - Gas	1,050,000	49,000	(1,001,000)	-95.3%
14 Other (Security, Legal, Strategy & Regulatory, External Affairs)	850,000	876,000	26,000	3.1%
15 Outdoor Lighting	650,000	675,000	25,000	3.8%
16 Public Relocation - Electric	450,000	475,000	25,000	5.6%
17 Public Relocation - Gas	350,000	475,000	125,000	35.7%
18 Real Estate and Facilities	200,000	225,000	25,000	12.5%
19 Storm	19,587,466	19,950,000	362,534	1.9%
20 System Performance - Electric	2,775,000	2,825,000	50,000	1.8%
21 System Performance - Gas	950,000	875,000	(75,000)	-7.9%
22 System Performance - Substations	4,775,000	4,950,000	175,000	3.7%
23 System Performance - Protection & Controls	100,000	100,000	-	0.0%
27 TOTAL DISTR OPERATION & MAINTENANCE EXPENSE - UNADJUSTED	46,187,466	47,000,000	812,534	
Rate-making Adjustments				
1 RMA 1	(3,500,000)	(3,500,000)	-	0.0%
2 RMA 2	(10,000,000)	(10,400,000)	(400,000)	4.0%
3 RMA 3	(4,000,000)	(7,500,000)	(3,500,000)	87.5%
4 RMA 4	(5,500,000)	(3,000,000)	2,500,000	-45.5%
	(23,000,000)	(24,400,000)	(1,400,000)	
Total Distribution O&M Expense - Adjusted	41,308,268	42,000,000	(587,466)	

MRP Lifecycle including Interim Filings and Reconciliation Process

