

ORDER NO. 89586

In the Matter of Alternative Rate Plans	*	BEFORE THE
or Methodologies to Establish New Base	*	PUBLIC SERVICE COMMISSION
Rates for an Electric Company or Gas	*	OF MARYLAND
Company	*	_____
	*	
	*	CASE NO. 9618
_____	*	_____

Issue Date: July 31, 2020

ORDER DENYING CLARIFICATION

1. On February 4, 2020, the Commission issued Order No. 89482, establishing a multi-year rate plan (“MRP”) pilot. That Order set forth a framework to guide Maryland utilities desiring to file an application for a change in base rates using an alternative form of rate regulation. For purposes of the pilot, the Commission accepted multi-year rate plans as the initial alternative form of regulation which utilities could pursue.
2. Order No. 89482 reviewed the numerous recommendations laid out in the Working Group Implementation Report filed on December 20, 2019¹ by the Commission’s Chief Public Utility Law Judge.² The Commission accepted, with

¹ *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 for Methodologies to Establish New Base Rates for an Electric Company or a Gas Company, Case No. 9618, Implementation Report, December 20, 2019 (“Report”).*

² The Chief Public Utility Law Judge was appointed in Order No. 89226 to lead a stakeholder group in providing recommendations regarding the content of the initial MRP filing.

modification, many of the working group’s recommendations and established a Pilot for one utility to explore alternative forms of ratemaking.³

3. 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 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. On February 5, 2020, Baltimore Gas and Electric Company (“BGE”) filed notice with the Commission that BGE intended to file an MRP application as the “Pilot Utility.” Subsequently, on May 15, 2020, BGE filed an MRP application, which the Commission docketed Case No. 9645.⁴ That matter is currently pending before the Commission.

Staff’s Petition for Clarification of Order No. 89482

4. On July 17, 2020, the Commission’s Technical Staff (“Staff”) requested that the Commission clarify the use of the multi-year rate plan by utilities other than the Pilot Utility.⁵ Specifically, Staff “asks that the Commission interpret the extent to which the Commission’s approval of a Pilot MRP for one utility forecloses other utilities from filing an MRP.”⁶ Staff submits that its request for the Commission’s interpretation of the Order is urgent because Staff alleges that two other utilities are currently planning to file MRPs despite the Commission’s docketing of Case No. 9645. Staff notes that one of the two companies intending to file an MRP desires to file it in August 2020—when direct

³ *Order Establishing Multi-Year Rate Plan Pilot*, Order No. 89482, and *In the Matter of Alternative Rate Plans for Methodologies to Establish New Base Rates for an Electric Company or a Gas Company*, Case No. 9618, February 4, 2020 at 2.

⁴ *Application of Baltimore Gas and Electric Company for a Multi-Year Plan* on May 18, 2020 (Case No. 9645). The statutory period for issuing an Order in this case does not end until mid-December 2020, and Direct Testimony is not scheduled to be filed until August 14, 2020.

⁵ *Petition for Clarification of Order No. 89482*, Case No. 9618, filed July 17, 2020 (“Staff Petition”).

⁶ Staff Petition at 1.

testimony in the Pilot Utility case is currently due—which means that it would be filed without: (1) the benefit of any guidance from the Pilot utility so carefully set out by the Commission in [Order No. 89482] and; (2) even before supplemental, reply, rebuttal and surrebuttal testimony has been filed and hearings have been held in the Pilot Utility’s case.⁷

5. Staff’s Petition states that, based on Commission Order No. 89482, it envisioned that the earliest filing of a second MRP would be at the conclusion of the first MRP, which will be three years after an order issues in the Pilot Utility case, at which time the Commission will begin the process for adopting regulations. Staff further states that “[a]bsent certain extenuating circumstances, the second MRP would be made no earlier than the finalization of the Lessons Learned Report and Commission Response to the Report (if any).”⁸

6. Staff offers two legal arguments for requesting the clarification. First, Staff contends that the filing of a second MRP before the conclusion of the Pilot would render the concept of a Pilot MRP as described in Order No. 89482 a nullity.⁹ Specifically, Staff points out that the Commission acknowledges the value to be gleaned from the Pilot by stating affirmatively that “[t]he 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, [Staff submits] the Commission

⁷ *Id.* at 1-2.

⁸ *Id.* at 4-5.

⁹ *Id.* at 5.

will promulgate regulations to ensure the orderly consideration of MRPs statewide.”¹⁰

Staff also notes that in furtherance of the Pilot concept, the Commission adopted, with modifications, the filing requirements recommended by the Working Group but declined to adopt any regulations prior to the completion of the Pilot.¹¹

7. Considering the emphasis that Commission Order No. 89482 places on the value to be gleaned from the Pilot for promulgating future regulations, Staff claims that “[t]o treat the Pilot as merely the first MRP of many by many utilities and as one that would be no more precedential than its immediate successors, would be to make a nullity of the Commission’s carefully crafted order.”¹²

8. Second, Staff argues that the Commission’s reference to its statutory authority in Paragraph 24 of Order No. 89482 is intended “to modify not negate the utility of the MRP Pilot.”¹³ Specifically, Staff found that Paragraph 24 of Order No. 89482 “is compatible with the Commission’s adoption of a Pilot MRP.”¹⁴ Paragraph 24 states:

The Commission finds that establishing a Pilot to consider the initial MRP pursuant to this Order will allow the 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

¹⁰ See Order No. 89482 at 2.

¹¹ Staff Petition at 5.

¹² *Id.* at 6.

¹³ *Id.*

¹⁴ *Id.*

the MRP “is not in the public interest” at the time it is filed.¹⁵

9. In Staff’s estimation Paragraph 24 is intended to make clear that the Commission was not adopting a process for staggering the filing of MRPs because this is not allowed by statute.¹⁶ But Staff argues that the Paragraph 24 language “could be interpreted to mean that any utility who so chose could file an MRP during the pendency of the Pilot...”¹⁷ Staff contends that based on Order No. 89482 “[i]deally no MRPs would be filed until after the Pilot has been completed and regulations for the MRP have been adopted.”¹⁸

10. In Staff’s interpretation of Order No. 89482, the Commission would allow other utilities to file traditional rate cases as needed in the interim, but not another MRP until after a final order and the Lessons Learned Report in the Pilot MRP.¹⁹ Staff claims that any undertaking of another MRP prior to this point “would defeat the purpose of a Pilot MRP because it would essentially force the Commission to proceed with no testing of the MRP framework resulting in actions that are contrary to the public interest.”²⁰

Commission Decision

11. The Commission finds that Paragraph 24 in Order No. 89482 already clearly addresses the question Staff poses. Paragraph 24 states in pertinent part that:

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.

¹⁵ *Id.*, citing Order No. 89482 at 13.

¹⁶ *Id.* at 7.

¹⁷ *Id.*

¹⁸ *Id.* at 6.

¹⁹ *Id.* at 6-7.

²⁰ *Id.* at 7.

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.²¹
(emphasis added).

12. The Commission acknowledges that establishing a Pilot for the initial MRP pursuant to the framework laid out in Order No. 89482 would serve as an *opportunity* to gather valuable lessons learned and gain valuable experience when it prepares to promulgate regulations. Additionally, the Commission understands there are limitations on the resources of Staff, the Office of People’s Counsel, and other intervenors. While the Commission may not prohibit another utility from filing a rate case (MRP or traditional) before the issuance of an order in the initial MRP case, the Commission cautions a utility that elects to file a MRP prior to the issuance of an order in the Pilot Utility case that it will forgo and forfeit an opportunity to glean valuable information, and risk the Commission’s exercise of its statutory authority to reject or modify a proposed MRP if it finds that the application is not “consistent with the public good” or “is not in the public interest” at the time it is filed.

13. In Order No. 89482, the Commission anticipated having the potential need to process more than one MRP when it stated that it plans to “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.”²²
(emphasis added).

²¹ *Id.*, citing Order No. 89482 at 13.

²² *See* Order No. 89482 at 40.

IT IS, THEREFORE, this 31st day of July, in the year Two Thousand Twenty by
the Public Service Commission of Maryland,

ORDERED: That the Commission denies Staff's Petition for Clarification.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners