

ORDER NO. 89637

In The Matter of the Electric Universal Service Program

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

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CASE NO. 8903

Issued: September 22, 2020

ORDER ON PROPOSED 2021 OPERATIONS PLAN

1. On May 29, 2020, the Office of Home Energy Programs (“OHEP”), an agency in the Maryland Department of Human Services’ (“DHS”) Family Investment Administration, submitted its Proposed Operations Plan for Fiscal Year (“FY”) 2021 (“Proposed Plan”) for the Electric Universal Service Program (“EUSP”).¹ Written comments were filed by the Commission’s Technical Staff (“Staff”) the Maryland Office of People’s Counsel (“OPC”)², as well as the Exelon Companies—Baltimore Gas and Electric (“BGE”), Potomac Electric Power Company (“Pepco”) and Delmarva Power and Light (“Delmarva Power”—collectively referred to as the “Joint Utilities,” and by the Retail Energy Supply Association (“RESA”).³ On July 24, 2020, the Commission held a legislative-style public hearing on this matter to receive additional input from OHEP and interested parties.⁴

¹ The Commission issued a Notice of Hearing and Opportunity to Comment in this matter on June 1, 2020 (Maillog No. 230502). Written comments were due by July 20, 2020.

² OPC also filed supplemental comments on the day of the hearing.

³ RESA submitted late-filed written comments on July 23, 2020 (Maillog No. 231250).

⁴ Representatives from Baltimore Gas and Electric, and the Potomac Electric Power Company and Delmarva Power and Light (“the PHI Companies”), as well as a representative of the Potomac Edison Company, also appeared at the hearing.

OHEP's Proposed Operations Plan for FY 2021

2. OHEP's Proposed Plan states that the available funds to support EUSP amounts to a total of \$151,718,800 for FY 2021. This amount represents \$35,702,270 from EUSP Ratepayer Funds ("Ratepayer Fund"); \$19,851,556 from the Maryland Strategic Energy Investment Fund ("MSEIF"), with revenues collected through the Regional Greenhouse Gas Initiative ("RGGI"); and \$76,358,572 in federal funding from the Low Income Home Energy Assistance Program ("LIHEAP"), the administrator of the Maryland Energy Assistance Program ("MEAP"). The Commission's statutory oversight and authority extends to the approval of the proposed allocation of the Ratepayer Fund for the bill assistance and arrearage components of the EUSP. *See* Public Utilities Article ("PUA"), *Maryland Annotated Code*, § 7-512.1. For FY 2021, OHEP proposes to provide arrearage assistance using \$12,000,000 from MSEIF.

3. With respect to the \$35,702,270 from the Ratepayer Fund, the Proposed Plan allocates \$4,459,819 for administration; \$71,882 for outreach; \$389,542 for OHEP's data system, and the remaining \$30,781,027 for bill assistance. After receiving testimony from OHEP and the interested parties, the Commission finds OHEP's proposed allocation of the Ratepayer Fund for FY 2021 EUSP operations to be reasonable and approves the allocation as proposed.

4. OHEP testified that its non-benefit expenditures are used to fund local operations, support technology enhancements, conduct outreach, and ensure program integrity. OHEP further indicated that its administrative expenditures include direct costs of

providing program services such as technology for tracking and monitoring the program, staff salaries and benefits, and customer screenings and assessments.⁵

5. For FY 2021, OHEP proposes allocating 12 percent of its budget for administrative expenses, which is slightly higher than the 10 percent allocation applied in previous years. OHEP stated that while the LIHEAP statute typically limits planning and administrative expenses to 10 percent of LIHEAP funds payable for a fiscal year, federal guidelines provide that grantees are the primary interpreters of the LIHEAP statute, and state interpretations of the statute will be accepted unless they are clearly erroneous.⁶ Staff notes that the Commission has approved a 12 percent administrative allocation in previous years, and Staff supports OHEP's proposed administrative allocation for FY 2021, noting that OHEP is in the process of deploying certain administrative changes and has additional data management costs.⁷

6. The Commission agrees with Staff's recommendation and approves OHEP's proposed FY 2021 allocations, including allocations for Administration, Data System, and Supplemental Outreach, recognizing that the 12 percent administrative allocation is the result of recent changes and updates, and finding the allocations to be reasonable and consistent with prior determinations.

Other EUSP-Related Matters

7. OHEP stated that it made operational changes in June 2018 to facilitate the year-round processing of applications.⁸ OHEP reported that these changes now permit applications that are entered in June to be mass-certified for payment in July, with benefits

⁵ Maillog No. 230502 at 27.

⁶ *Id.*

⁷ Maillog No. 231204 at 8.

⁸ *Id.* at 19.

being applied to accounts up to 60 days earlier in the program year.⁹ OHEP noted that it can also change the application period to accommodate unexpected funding reductions or higher application levels than expected.¹⁰

8. OHEP anticipates increased applications in FY 2021 due to the COVID-19 pandemic. However, OHEP also stated that anticipated increased funding in FY 2021 as a result of the federal CARES Act¹¹ will enable OHEP to provide additional assistance without reducing existing benefits.

9. OHEP indicated that it saw a substantial increase in applications over the previous program year, particularly online applications, following Maryland Governor Larry Hogan's March 6, 2020 Declaration of Emergency, and the subsequent Executive Orders pertaining to business operations. However, OHEP noticed that half of the online applications filed between March 6 and April 15, 2020 were duplicate applications. Additionally, OHEP reported, applications significantly decreased, compared to the previous program year, following the Governor's Executive Order that protected residential customers from disconnection of their utilities for non-payment. Despite the decreased application volume, OHEP anticipates an increase towards the end of the program year, as well as a substantial increase, with 150,000 to 170,000 applications projected, in FY 2021 due to the impact of COVID-19 and the lifting of the utility disconnection moratorium.

10. OHEP also provided an update of the integration of its data system into the Maryland Total Human Services Information Network ("MD THINK"), which OHEP

⁹ *Id.*

¹⁰ *Id.*

¹¹ Also known as the Coronavirus Aid, Relief, and Economic Security Act.

described as a high tech platform used for accessing the database for the State's public assistance benefits programs. The MD THINK platform is expected to streamline and expedite program eligibility determinations, and OHEP's integration onto the platform is designed to reduce administrative costs, simplify the application process and increase participation rates. OHEP explained at the hearing that MD THINK plans to launch a joint database – the Enrollment Eligibility System – in October 2020 to house all benefit programs, but OHEP is not yet a part of the database.¹² OHEP's integration into MD THINK, along with appropriate changes to the Code of Maryland Regulations ("COMAR") and DHS operations, would enable OHEP to implement categorical eligibility for its energy assistance programs, where households are automatically determined eligible for EUSP and MEAP based on their eligibility for other assistance programs.¹³

11. OHEP provided a consultant report to the Commission in November 2019, detailing the fiscal implications of the changes and provided a summary of the findings at the hearing. Based on the consultant's analysis, OHEP estimated that the full integration into MD THINK, along with categorical eligibility, could increase participation rates by as much as eight percent and reduce administrative costs by more than \$2.8 million per year.¹⁴

12. The Joint Utilities, in their written comments, supported OHEP's efforts to increase participation in its grant programs, including the development of categorical

¹² Hearing Tr. at 37.

¹³ Tr. at 38-40.

¹⁴ Tr. at 45.

eligibility.¹⁵ They noted that in 2019, only 26 percent of eligible Maryland households received federal energy assistance grants from OHEP, and they planned to work with OHEP on using MD THINK to help increase the number of recipients.¹⁶

13. Commission Staff recommended that the Commission direct OHEP to provide a precise definition of categorical eligibility, a description of the circumstances under which categorical eligibility would occur, and the income eligibility threshold for all relevant programs to be included under MD THINK.

14. At the hearing, OHEP explained that categorical eligibility, also known as automatic eligibility, would enable OHEP to automatically enroll applicants in the energy assistance programs if a member of the household is already receiving Food Supplement Program or other public assistance benefits, and OHEP would use the household income information for the approval.¹⁷ The purpose of categorical eligibility is to streamline the application approval and re-approval processes and would require regulatory and operational changes to include OHEP.¹⁸

15. OHEP also described its review of the results of categorical eligibility in other states, which included states with lower administrative costs and a higher proportion of applicants deemed eligible.¹⁹ The Commission is satisfied with the OHEP's explanation and directs OHEP to provide updates every six months, beginning December 31, 2020, on its integration into MD THINK and transition to categorical eligibility.

¹⁵ Maillog No. 231197 at 1.

¹⁶ *Id.*

¹⁷ Tr. at 39-40.

¹⁸ *Id.*

¹⁹ Tr. at 44.

Additional Issues

16. OHEP noted at the hearing that it submitted two Joint Chairman Reports to Maryland's General Assembly in FY 2020 – one report regarding application processing time, which reflected an average processing time of 20 days. The second report addressed the funding required to increase program participation by 50 percent, 75 percent or 100 percent of the eligible population while providing EUSP benefits at current levels.²⁰

17. At the hearing, OHEP indicated that Maryland's participation rate is currently at 26 percent, and as of 2018 was ranked the 10th highest in the country.²¹ According to OHEP, no state has approached a 75 percent participation rate. OHEP also addressed its application denial rate at the hearing, stating that it will issue a report detailing denial rates by benefit type from FY 2019 through FY 2021 in October 2020.²²

18. In its Proposed Operations Plan, OHEP also proposed a separation of MEAP and Utility Service Protection Program ("USPP") to eliminate utilities' need to seek an annual waiver from the Commission.²³ USPP is designed to protect MEAP customers from having their utilities terminated during the heating season.²⁴ USPP customers must participate in the utility's year-round budget billing plan and risk being removed from USPP for failure to make consecutive budget billing payments.²⁵ First-time USPP applicants can choose to apply all or part of their MEAP benefit to their arrearages in

²⁰ Tr. at 48-49.

²¹ Tr. at 50.

²² Tr. at 51.

²³ Maillog 230502 at 7.

²⁴ COMAR 20.31.05.01-04.

²⁵ COMAR 20.31.05.06-07.

order to qualify for USPP, but this is a one-time election.²⁶ The Commission's annual waivers to utilities allow for MEAP to be used to reduce arrearages for non-first-time USPP enrollees. OHEP noted that the linking of MEAP assistance to USPP participation was implemented before the existence of EUSP and the electric and gas arrearage benefits, and the changed energy assistance landscape has rendered the MEAP/USPP connection obsolete.²⁷ OHEP noted a steady decline in customers willing to enroll in USPP over the years, and customers appear to value the immediate impact of the MEAP benefit more than USPP.²⁸ OHEP also discussed its participation in the MEAP/USPP waiver workgroup, noting at the hearing that Commission Staff has requested data from utilities for the MEAP/USPP waiver workgroup's use in examining whether MEAP and USPP should continue to be linked.²⁹

19. BGE, Pepco and Potomac Edison acknowledged at the hearing that they received and responded to the data requests, and the utilities were interested in continuing their participation in the waiver workgroup.³⁰ However, they emphasized that the waiver workgroup has not had a sufficient number of meetings to recommend a long-term solution to the waiver issue, and more discussion was needed.³¹ Potomac Edison discussed the usefulness of the MEAP/USPP connection, stating that arrearages were a part of a customer's energy burden, and it was important to address arrearages as well as the more immediate need for assistance.³²

²⁶ COMAR 20.31.05.08.

²⁷ *Id.*

²⁸ Tr. at 79.

²⁹ *Id.*

³⁰ Tr. at 85-86.

³¹ *Id. See also* Maillog No.231197 at 2.

³² Tr. at 96-97.

20. Commission Staff recently issued 10 data requests to utilities and analyzed the data received to determine how the MEAP funding is used, and drafted proposed regulations for discussion.³³ Staff stated that the utilities also drafted proposed regulatory language pertaining to eliminating the waiver or addressing the need to retain it.³⁴

21. OPC recommended that the Commission direct OHEP to use all funding allocated for bill payment assistance according to the Commission's past orders, and further recommended that the Commission consider ways to maximize the effectiveness of available EUSP funds, increase the overall participation rates, decrease the continued high denial rates, and ensure that EUSP funds are being utilized effectively to reduce the energy burdens of low-income households. In its Proposed Operating Plan and at the hearing, OHEP described its efforts to address these issues.

22. OPC recommended that the Commission direct the utilities to provide data needed to determine the amount of bill assistance benefits being used to pay arrearages instead of future electric bills.³⁵ OPC indicated that using the benefits to pay arrearages reduces the funding available to assist with current and future bills, making the bills less affordable for some customers.³⁶ According to OPC, having the data will reveal the magnitude of the issue and enable the determination of the level of bill assistance benefits needed to make bills affordable.³⁷ In its Proposed Plan, OHEP addressed OPC's request, noting that it is unclear what amount of bill assistance and MEAP benefits are applied to customer past

³³ Tr. at 114.

³⁴ *Id.*

³⁵ Maillog No. 231203 at 23.

³⁶ *Id.* at 24.

³⁷ *Id.*

due amounts, therefore making it difficult to determine an adequate level of arrearage funding.³⁸

Determinations Regarding OPC Recommendations

23. The Commission declines OPC's recommendation to direct OHEP to report the amount of bill assistance and MEAP program benefits being applied to past due balances in its 2020 annual report and in next year's operations plan. OHEP already is investigating this issue as discussed in its FY2021 Plan.³⁹ The Commission directs OHEP to share its findings in future reports as the information becomes available along with any issues that arise while working with the utilities.

24. The Commission agrees with OPC's recommendations to encourage OHEP to: (1) provide updates on the rollout of MD THINK and explain how application denials and participation rates can be addressed if implementation delays occur or become expected; (2) include DHS call center quality assurance and performance metrics in its operations plan; and (3) offer telephonic signatures as a permanent policy measure after this temporary policy expires on December 31, 2020. However, the Commission declines to direct OHEP to provide more information on its outreach activities planned for those impacted by COVID-19 and how it plans to better target its limited outreach budget, finding that OHEP's present efforts are adequate at this time.

Determination on MEAP/USPP Waivers

25. The Commission finds it is premature to determine whether the MEAP/USPP interconnection should be eliminated without further input from Staff and stakeholder process. The Commission directs Staff and the stakeholders to continue discussions on the

³⁸ Maillog No. 230502 at 22.

³⁹ *Id.*

waivers, and directs Staff to file with the Commission, by December 31, 2020, a summary of stakeholder efforts and recommendations on the MEAP/USPP waiver issue.

Determinations Regarding Utilities' Recommendations

26. The Exelon Utilities recommended that the Commission encourage collaboration between OHEP and the utilities on integrating MD THINK with utility operations to streamline the application process. The Commission encourages discussion between OHEP and the utilities on recommendations for integrating MD THINK with utility operations to streamline the application process, keeping in mind that DHS, as the administering agency of MD THINK, will determine whether to incorporate such recommendations.

27. Finally, the Commission declines the Joint Utilities' recommendation that the Commission encourage OHEP to provide further details on how the funds needed to support the estimates in the Joint Chairmen's Report, for participation rate increases, would be raised and allocated among taxpayers, ratepayers, or other sources, as the Commission finds that the information that OHEP provided in its Proposed Operating Plan is sufficient at present, and the Joint Utilities were not specific regarding the details they are seeking.

OPC's Request for Information Regarding the Use of Energy Assistance Funds

28. OPC again renewed its requests that the Commission direct the utilities to provide more information regarding how energy assistance funding is being applied to customer bills in order to evaluate whether these funds are being used effectively.⁴⁰ Specifically,

⁴⁰ Maillog No. 231203 at 15.

OPC requests information regarding: (a) how many EUSP and MEAP customers receive electric and gas supply from a retail supplier for each billing period in the past 24 months; (b) the total aggregate amount those customers paid in retail supply charges for each billing period in the past 24 months; (c) the total aggregate usage (in kWh or therms) appearing on those customers' bills for each billing period in the past 24 months; and (d) the total aggregate amount those customers would have paid for default (SOS or SS) service from the utility based on the usage for each billing period in the past 24 months.⁴¹

OPC noted that the Commission previously directed the utilities to "provide the number of EUSP (and MEAP) customers that receive electric or gas supply from a retail supplier," and recent data from the five electric companies subject to the Commission's Order indicated possible evidence of extensive supplier marketing to low-income residents.⁴²

OPC further noted that the Southern Maryland Electric Cooperative ("SMECO") voluntarily provided aggregate billing data that revealed a total net loss of more than \$84,000 in four of the past 12 months that SMECO reported.⁴³ According to OPC, the data provided proves that SMECO customers using retail suppliers paid thousands of dollars more than they would have if they were charged SMECO's SOS rate.⁴⁴

29. A number of parties responded to OPC's request. For example, the PHI Companies stated at the hearing that, in November 2019, the companies provided OPC with the number of customers receiving energy assistance who are enrolled with retail suppliers, for the last 24 months, and updated the information a week before the hearing.⁴⁵

⁴¹ *Id.* at 16.

⁴² See Order No. 89215, Tr. at 19.

⁴³ Maillog No. 231203 at 20.

⁴⁴ *Id.* See also Tr. at 98-101.

⁴⁵ Tr. at 87.

PHI Companies noted that the remainder of the information that OPC seeks is already available to OHEP through the PHI Agency Portal.⁴⁶

30. For aggregate data, the PHI Companies acknowledge that the utilities would have to develop an automated program to run additional queries, which would entail additional costs.⁴⁷

31. OPC objects to accessing the utility portals as a solution to their requests for information, noting that it “would want affirmative consent by those customers to look up the data.” OPC also stated that the data that SMECO provided “is an aggregated dollar amount and it doesn’t go into an individual customer’s prices. It really is the aggregate billing figures for all of those residential customers served by our retail suppliers [,which] we believe makes the concern with confidentiality of pricing information moot.”⁴⁸

32. RESA continues its objection to OPC’s request, noting that the data provided by the utilities following Order No. 89215 did not warrant a change in RESA’s position. RESA maintains that the information OPC is requesting would not provide a useful comparison between retail supplier and SOS pricing.⁴⁹ RESA recommended that the Commission not grant OPC’s request but consider providing an opportunity for broader stakeholder input and suggestions for dealing with the issues of retail choice and pricing in the competitive supplier market.⁵⁰

33. In Order No. 89215, following the review of OHEP’s FY 2020 Proposed Operations Plan, the Commission found that some of the information requested by OPC is

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ Tr. at 78.

⁴⁹ Maillog No. 231250 at 2.

⁵⁰ *Id.*

already available either via platforms such as the “agency portal” described by the PHI Companies and BGE, or through a combination of such platforms and the information that is available on the Commission’s website.⁵¹ However, in Order No. 89215 the Commission affirmed its directive from its previous Order No. 88850 that required the utilities to provide the number of EUSP and MEAP customers that receive electric or gas service from a retail supplier.⁵² The Commission’s finding on this issue with regard to OPC’s request remains the same.

34. The Commission, as stated in previous orders, finds that the utilities should continue to provide OPC with the existing level of access to information, as described above. However, the Commission again declines to direct the utilities to provide the total aggregate amounts those customers paid in retail supply charges and the total aggregate amount those customers would have paid for default SOS service from the utility, since much of the information requested by OPC is already available either through the utilities’ agency portals or the Commission’s website.⁵³ The Commission again this year directs the utilities to provide the number of EUSP and MEAP customers that receive electric or gas service from a retail supplier. The Commission also directs that Staff provide periodic

⁵¹ Order No. 89215 at 7.

⁵² *Id.*

⁵³ Commissioner Richard dissents from this determination and states the following: “I would provide OPC with the information they are requesting on how much EUSP customers are paying for electricity provided by retail suppliers. This information would be valuable to ensure that limited EUSP financial resources are available to all low-income Marylanders. Further it would help the Commission determine whether EUSP customers are receiving the full amount of bill assistance to which they are entitled. This information could also inform State policy makers whether electric and gas retail energy products are designed to best serve low-income EUSP customers and whether these products are in the public interest. SMECO voluntarily provided this information to OPC without significant difficulty, demonstrating that it can be done at minimal effort and cost.”

progress reports with regard to stakeholder discussions on this issue when the Advisory Board reconvenes.⁵⁴

IT IS, THEREFORE, on this 22nd day of September, in the year Two Thousand and Twenty, by the Public Service Commission of Maryland,

ORDERED: (1) That OHEP's Proposed Operations Plan for FY 2021 is accepted and the allocations for the Ratepayer Fund of \$4,459,819 for administration; \$71,882 for outreach; \$389,582 for OHEP's data system; and the remaining \$30,781,027 for bill assistance, are hereby approved;

(2) That OHEP, BGE and the PHI Companies continue to provide the information to OPC and Commission Staff, as described above;

(3) That OHEP is directed to provide the Commission semiannual updates on its integration into MD THINK and its transition to categorical eligibility;

(4) That Staff and other parties are directed to work with OHEP to consider options to maximize the effectiveness of available EUSP funds, to increase the overall participation rates and decrease the high denial rates, and that Staff is directed to report to the Commission, by December 31, 2020, a summary of the parties' discussions and findings for Commission consideration;

⁵⁴ The OHEP Advisory Board comprises various stakeholders, such as Commission staff, OPC staff, local social service agencies, and utilities. See Maillog No. 230502 at 11. The Advisory Board addresses issues affecting the home energy needs of low-income families, advises OHEP regarding its efforts to ensure program effectiveness and compliance with applicable statutes, and assists in information dissemination and outreach efforts. The Advisory Board convened three meetings during FY 2020. *Id.*

- (5) That OHEP's recommendation that MEAP and USPP be disconnected is denied and that Staff is directed to file with the Commission, by December 31, 2020, a summary of stakeholder efforts and findings on the MEAP/USPP waiver issue; and
- (6) That Staff is directed to continue to participate as part of any OHEP EUSP-related Advisory Board proceedings and to provide periodic reports to the Commission.

By Direction of the Commission,

/s/ Andrew S. Johnston

Andrew S. Johnston
Executive Secretary