

ORDER NO. 90445

Delmarva Power & Light Company's	*	BEFORE THE
Application for an Electric Multi-Year	*	PUBLIC SERVICE COMMISSION
Plan	*	OF MARYLAND
	*	_____
	*	
	*	CASE NO. 9681
_____	*	_____

ORDER ON APPLICATION FOR A MULTI-YEAR RATE PLAN

Before: Jason M. Stanek, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Patrice M. Bubar, Commissioner

Issued: December 14, 2022

APPEARANCES

Kimberly A. Curry, Douglas E. Micheel, Matthew K. Segers, and Taylor W. Beckham for Delmarva Power & Light Company.

David S. Lapp, William F. Fields, Juliana Bell, and Irene Wiggins for the Maryland Office of People's Counsel.

Don C. A. Parker, Barry A. Naum, and Steven W. Lee for Walmart, Inc.

Annette B. Garofalo, Peter A. Woolson, James M. Gregor, and Hunter B. Davis for the Maryland Public Service Commission Staff.

INTRODUCTION AND EXECUTIVE SUMMARY

1. On May 19, 2022, Delmarva Power & Light Company (“Delmarva” or “DPL”) filed an Application with the Commission seeking a three-year Multi-Year Rate Plan (“MRP”),¹ requesting electric rates to be effective June 18, 2022, June 18, 2023, and June 18, 2024. On May 20, 2022, the Commission suspended the application of the proposed tariff revisions and initiated this Case. Three stakeholders intervened as Parties: Office of the Maryland People’s Counsel (“OPC”), Walmart, Inc. (“Walmart”), and Commission Staff (“Staff”).
2. On October 7, 2022, the Parties filed a Proposed Settlement, resolving all disputed issues except those concerning the need for a Bill Stabilization Adjustment (“BSA”) and the appropriate reconciliation mechanism to be applied at the end of the three-year MRP period.²
3. The Commission has reviewed the evidence and testimony presented, including the comments received at the public hearings in reaching the decisions in this Order. Based on the record, the Commission approves the Proposed Settlement and authorizes DPL to increase its electric distribution rates for each of the years of the MRP as provided in the chart below, with each year’s new rates effective January 1 of that year. The chart also shows an estimated bill impact for a residential customer on Standard Offer Service using an average of 1,004 kWh per month.

¹ The acronym “MRP” refers to a multi-year rate plan, as discussed and approved for a pilot in Commission Order No. 89482 (the “MRP Pilot Order”).

² Maillog No. 242586.

Electric – Incremental Revenue Requirement	Authorized	Monthly Overall Increase for an Average Residential Customer	Increase as Percentage of Total Bill
Rate Year 1 (2023)	\$16,938,589	\$5.10	2.98%
Rate Year 2 (2024)	\$5,968,342	\$1.80	1.02%
Rate Year 3 (2025)	\$6,009,599	\$1.81	1.01%

4. The Commission also approves DPL’s proposed BSA and reconciliation process, which it finds will lead to just and reasonable rates.

BACKGROUND

5. DPL filed its Application on May 19, 2022, requesting a three-year MRP based on fully forecasted data. The Application was supported by the Direct Testimonies of DPL witnesses Elizabeth Morgan Downs O’Donnell (DPL Ex. 3), Phillip S. Barnett (DPL Ex. 5), William Sullivan (DPL Ex. 7), Kenneth J Barcia (DPL Ex. 15), Morton D. Bell-Izard (DPL Ex. 10), Jay C. Ziminsky (DPL Ex. 13), Michael T. Normans (DPL Ex. 16), Peter R. Blazunas (DPL Ex. 18), Adrien McKenzie (DPL Ex. 20), and Mark Warren (DPL Ex. 22).

6. On May 20, 2022, the Commission docketed DPL’s Application as Case No. 9681 and issued Order No. 90240, which suspended the proposed new rates pursuant to Public Utilities Article (“PUA”), *Annotated Code of Maryland*, § 4-204 for 150 days from June 18, 2022. That Order also set a deadline for the filing of petitions for intervention and scheduled a prehearing conference. Delmarva published notice of its Application in five newspapers in its territory on June 1 and 3, 2022, providing notice of the Commission's

prehearing conference and the deadline for intervening. Certificates of Publication were filed with the Commission on June 15, 2022.³

7. A prehearing conference was conducted on June 15, 2022, at which the Commission granted Walmart's Petition to Intervene.

8. Order No. 90263, issued June 16, 2022, set a procedural schedule for filing of testimony, hearings for cross-examination of witnesses, filing of briefs and reply briefs. It also set forth procedures for discovery and directed the Parties to arrange hearings for receipt of public comment. The order also suspended DPL's proposed tariffs until December 15, 2022.

9. On August 19, 2022, Walmart filed the direct testimony of Alex J. Kronauer (Walmart Ex. 1); OPC filed the direct testimonies of David J. Efron (OPC Ex. 1 and 2), Courtney Lane (OPC Ex. 4 and 4-C), Jorge Camacho/Ron Nelson (OPC Ex. 5 and 5-C), Kevin O'Donnell (OPC Ex. 6), and Melissa Whited (OPC Ex. 8); and Staff filed the direct testimonies of Kevin J. Mosier (Staff Ex. 1-revised), Jamie Smith (Staff Ex. 3 and 3-C), Mark Rielly (Staff Ex. 4 and 4-C), Roger F. Austin (Staff Ex. 2 and 2-C), David Hoppock (Staff Ex. 8), Brett Sproul (Staff Ex. 7), and Drew M. McAuliffe (Staff Ex. 5).

10. On September 19, 2022, DPL filed the rebuttal testimonies of DPL witnesses O'Donnell (DPL Ex. 4), Sullivan (DPL Ex. 8 and 9), Barnett (DPL Ex. 16), Ziminsky (DPL Ex. 14), Bell-Izzard (DPL Ex. 11), Normand (DPL Ex. 17), Blazunas (DPL Ex. 19), and Warren (DPL Ex. 23 and 24); OPC filed the rebuttal testimony of witness O'Donnell (OPC

³ Maillog No. 241114.

Ex. 7); and Staff filed the rebuttal testimony of witnesses McAuliffe (Staff Ex. 6) and Hoppock (Staff Ex. 9).

11. Hearings for the purpose of soliciting comments from the public were held on September 13 and 22, 2022, with written comments received through October 7, 2022.

12. Hearings for the receipt of cross-examination of witnesses were scheduled to begin September 27, 2022. On September 27, 2022, the Parties filed a request to cancel the evidentiary hearing, stating that the Parties had reached a Proposed Settlement regarding most issues.⁴ The Commission granted that request on September 27, 2022.

13. On October 7, 2022, the Parties filed a Proposed Settlement, resolving all disputed issues except those concerning the need for a Bill Stabilization Adjustment and the appropriate reconciliation mechanism to be applied at the end of the three-year MRP period. On October 12, 2022, DPL filed the Settlement Testimony of Elizabeth Morgan Downs O'Donnell (DPL Ex. 4); OPC filed the Supplemental Testimony of David J. Effron (OPC Ex. 3); Walmart filed a letter in support of the Proposed Settlement in lieu of testimony; and Staff filed the Joint Testimony in Support of the Settlement of David Hoppock and Jamie Smith (Staff Ex. 1-S).

14. On October 24, 2022, the Commission held a hearing concerning the Proposed Settlement. At that hearing, the Commission admitted into evidence all pre-filed testimonies without challenge from any party.

15. On November 1, 2022, the Parties filed opening briefs and supporting evidence on the contested issues. On November 14, 2022, the Parties filed responsive briefs.

⁴ Maillog No. 242457.

DISCUSSION AND FINDINGS

I. Settlement Agreement

A. Summary

16. On October 7, 2022, DPL filed on behalf of all parties to this Case a Joint Motion for Approval of a Unanimous Stipulation and Partial Settlement Agreement (the “Settlement”).⁵ The Settlement would permit DPL to set rates during the MRP period in order to achieve incrementally increased revenue over each year of that period as follows: \$16,938,589, \$5,968,342, and \$6,009,599. The Settlement calculated its revenue requirements based on an agreed capitalization of 49.50% long-term debt and 50.50% common equity at an agreed upon return on equity of 9.6%.

17. The Settlement provided that new rates would become effective January 1, 2023 for Rate Year 1, January 1, 2024 for Rate Year 2, and January 1, 2025 for Rate Year 3.

18. The Settlement did not resolve two issues, discussed below: the proposed Bill Stabilization Adjustment and the MRP reconciliation process.

19. The Settlement included proposed tariff sheets reflecting the agreed upon rates.⁶

20. The Settlement also included a list of capital projects agreed to be removed or reduced in expenditure amounts, as compared to DPL’s proposed capital project list included in its pre-filed testimony.⁷

⁵ Maillog No. 242586 (the “Settlement”).

⁶ Settlement Exhibit 2.

⁷ *Id.* at 3.

21. The Settlement provided that, within 45 days of this Order, DPL will request that the PC44 Rate Design Work Group schedule a meeting to discuss the R-TOU-ND SOS class's rate design at a time dependent on the availability of the work group.⁸

22. The Settlement provided that, in future Delmarva MRP filings, along with the current and future annual information filings and reconciliations, it will provide a breakdown of the capital project expenses applicable to its Maryland Distribution.⁹

23. The Settlement also provided that DPL shall be authorized to create four regulatory assets, with costs amortized starting January 1, 2023: (1) MRP regulatory commission expenses of \$587,000 forecasted balance amortized over a three-year period, (2) electric vehicle pilot expenses of \$1,577,000 forecasted balance amortized over a five-year period with the unamortized balance earning the approved overall rate of return, (3) battery storage pilot expenses of \$2,605,000 forecasted balance amortized over a 10-year period with the unamortized balance earning the approved overall rate of return, and (4) COVID-19 bad debt expenses of \$526,000 forecasted balance amortized over a five-year period.¹⁰

24. The Settlement provided that DPL will provide a one-time bill credit per customer for service classifications TN, TS-T, and ORL, and a one-time credit per light for service classification OL, to effectuate a Gross Receipts Tax Reserve refund.¹¹ All other service classifications will receive their credits through the monthly BSA mechanism. The total amount to be refunded is \$410,263 and is to be allocated to service classifications using

⁸ Settlement at 5.

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 6

¹¹ Delmarva Initial Brief at 4.

the compliance rate design revenue allocation as proposed by DPL in Case No. 9670. DPL will provide these credits to customers within 90 days following the issuance of this Order.

B. Supporting Testimony

1. Delmarva

25. DPL witness Elizabeth Morgan Downs O'Donnell testified in support of the Settlement.¹² She testified that the Settlement is in the public interest for three reasons: (1) it provides for just and reasonable rates that recover DPL's costs of providing safe and reliable service; (2) it balances the needs and interests of stakeholders; and (3) it conserves stakeholder and Commission resources by avoiding the costs and time of a full evidentiary hearing.¹³

26. Ms. O'Donnell testified that the \$28.9 million overall cumulative revenue requirement represents a reasonable compromise between the \$37.5 million originally requested by DPL and the \$23.7 million and \$15.7 million recommended by Staff and OPC.¹⁴

2. Office of People's Counsel

27. OPC witness David Effron testified in support of the Settlement.¹⁵ He testified that the primary differences between the Settlement revenue requirement, and that requested by DPL, originally come from changes in the rates of return and adjustments to plant additions.¹⁶ He testified that the differences in opinion between the parties created

¹² DPL Ex. 4, O'Donnell Settlement Testimony at 1.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 4.

¹⁵ OPC Ex. 3, Effron Settlement Testimony at 1.

¹⁶ *Id.* at 1-2.

litigation risk and that the Settlement manages risk for residential ratepayers and is therefore reasonable and justified.¹⁷

3. Walmart

28. Walmart filed a letter in lieu of formal testimony, in which it stated that it fully supports the terms of the Settlement.¹⁸

4. Staff

29. Staff witnesses David Hoppock and Jamie Smith testified in support of the Settlement, stating that the additional revenues provided for in the Settlement are within a range of reasonableness and result in just and reasonable rates.¹⁹ They testified that they support the increased customer charges, which generally increase proportionally with distribution revenue or otherwise align with their recommendations, given in testimony.²⁰ They further testified that the R-TOU-P rate design has been updated to be consistent with Order No. 90298 in PC44 and incorporates the updated class cost of service data presented in this case.²¹ Lastly, witnesses Hoppock and Smith testified that the Settlement adopts Staff's recommended Residential Class SOS Administrative Adjustment of 1.38 mills per kWh.²²

C. Commission Decision

30. In every rate case, the Commission must find that the resulting rates are just and reasonable both for the utility and its customers and that rates are not an “undue burden to

¹⁷ *Id.* at 2-3.

¹⁸ Maillog No. 242634, Walmart Settlement Letter at 1.

¹⁹ Staff Settlement Testimony at 9.

²⁰ Staff Ex. 1-S, Staff Settlement Testimony at 4-5.

²¹ *Id.* at 6.

²² *Id.* at 7.

one customer class more than another.” *Re Baltimore Gas and Elec. Co.*, 105 Md. P.S.C 596, 605 (2014) (citations omitted). This rule has been called “the cornerstone of the regulation of public utilities in Maryland.” *Office of People’s Counsel v. Maryland Pub. Serv. Comm’n*, 355 MD. 1, 25 (1999). The rule applies regardless of whether a case is contested or settled, and the fact that a settlement has been submitted by the parties does not require the Commission to adopt it. *Id.*; *See, e.g., Re Verizon Maryland, Inc.* 100 Md. P.S.C. 69, 73 (2009) (rejecting a proposed settlement because it did not serve the public interest and did not meet certain statutory requirements).

31. PUA § 4-101 defines “just and reasonable rate” as follows:

“A rate that (1) does not violate any provision of the 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.”

32. In determining whether to accept a settlement, the Commission has considered factors such as the avoidance of time and litigation costs associated with rate case proceedings, whether the interests of the settling parties are normally adverse to one another, and the likelihood that the settlement produced results that would be the approximate outcome if the case had been fully litigated. *Re Potomac Elec. Power No.*, 93 Md. P.S.C. 134, 137 (2002).

33. After consideration of the evidence presented, the Commission finds that the agreed upon revenue allocation and rate design is just and reasonable to all classes and balances the principle of cost causation with the need for gradualism in ratemaking. The

Commission notes that the Settlement comes during a period of heightened inflationary pressures, from which the electric distribution industry is not immune. The Commission also finds that the agreed upon conditions to the Settlement, described above, are reasonable.

34. Unlike a traditional rate case, this case calls for a reconciliation at the end of the three-year rate-effective period. The Commission has never before reviewed a proposed settlement in a rate case with such a reconciliation process, of which this case is only the third MRP approved in Maryland. The reconciliation process approved in this case, discussed below, requires a final prudence review of spending that compares forecasted spending with actual spending. The Settlement included agreed upon project list data for proposed capital projects. It did not include project list data for non-capital spending. As a condition of Settlement approval, the parties are directed to file within 30 days an agreed upon project list for non-capital spending for the first year of the rate effective period.

II. BILL STABILIZATION ADJUSTMENT AND RECONCILIATION MECHANISM

35. The Parties were unable to reach agreement on two issues: the Bill Stabilization Adjustment and the Reconciliation Mechanism. Because those issues are interrelated, this Order will address them together.

A. Party Positions

1. DPL's Case in Chief

36. DPL witness Peter Blazunas testified that DPL's proposed rate design included a BSA.²³ He testified that the BSA is a revenue decoupling mechanism that removes the link

²³ DPL Ex. 18, Blazunas Direct at 17.

between electricity use and utility distribution revenue.²⁴ He explained that the BSA functions as a monthly adjustment to customer distribution rates, lowering rates when revenues exceed the Commission-approved target level of revenue per customer and raising rates when revenues fall below the target revenue per customer.²⁵

37. Mr. Blazunas testified that the BSA will allow DPL to support programs such as energy efficiency, distributed energy resources, and innovative rate designs that advance public policy goals but decrease customer usage or revenues.²⁶ He also testified that the BSA may also result in benefits to customers as a result of increased electrification.²⁷

38. Mr. Blazunas testified that the BSA proposed by DPL is consistent with other BSAs approved in other MRPs by the Commission.²⁸

39. Mr. Blazunas testified that the use of forecasted billing determinants that account for forecasted changes in usage does not remove the need for a BSA because, while forecasting reduces risk, it is impossible for DPL to perfectly forecast actual billing determinants over the MRP period.²⁹ He testified that forecasting also does not affect the way the BSA changes DPL's incentives to support public policy.³⁰

40. Mr. Blazunas testified that DPL's proposed MRP reconciliation process, also at issue in this case, does not remove the need for a BSA because they serve different

²⁴ *Id.* at 18.

²⁵ *Id.*

²⁶ *Id.* at 19.

²⁷ *Id.* at 19-20.

²⁸ *Id.* at 20.

²⁹ *Id.*

³⁰ *Id.* at 20-21.

purposes.³¹ He testified also that the BSA is complementary to the reconciliation process because the BSA helps minimize the size of any imbalance associated with distribution revenue.³² He testified that removing the BSA would expose DPL to revenue variances caused by factors outside its control (like weather), creating regulatory uncertainty or lag, and eliminate the incentive to support public policy initiatives.³³

41. DPL witness Ziminsky testified that DPL was also proposing a reconciliation process in line with the process described by the Commission in Order No. 89482 for the MRP Pilot.³⁴ That process would consist of annual informational filings, a consolidated reconciliation in a subsequent rate case, and a final reconciliation review after the conclusion of the MRP period. DPL would be required to file a new rate case at least 210 days prior to the end of the MRP period. As part of the reconciliation process, any over-collection (comparing actual revenues to prudently incurred costs) would be returned to ratepayers through a rider, subject to carrying costs, while any under-collection would be included in rates but not subject to carrying costs.³⁵

2. OPC

42. OPC witness Ronald Nelson testified that, although the Company's proposed reconciliation mechanism is consistent with the Commission's Pilot design in Order No. 89482, the design does not incentivize the Company to optimize its costs within a predefined budget and instead allows the Company to upwardly revise its revenue

³¹ *Id.* at 21.

³² *Id.*

³³ *Id.* at 21-22.

³⁴ DPL Ex. 13, Ziminsky Direct at 41.

³⁵ *Id.* at 44-45.

requirement to account for increased spending.³⁶ Mr. Nelson testified that MRPs should shift the risk of poor utility management from ratepayers onto shareholders.³⁷

43. Mr. Nelson recommended that the Commission instead implement a one-way reconciliation mechanism, wherein over-collected amounts are returned to customers, but the Company is not allowed to increase its revenue requirement in the event of unforecasted spending.³⁸ Mr. Nelson argued that the Commission, in Order No. 89482, recognized that utilities have asymmetrical access to information and cost-controls compared to customers, and he argued that this justifies a one-way reconciliation.³⁹

44. Mr. Nelson testified that, in the event of extraordinary costs that could not be forecasted, the Commission could address those costs through other regulatory processes, including deferred accounting treatment or the off-ramp provision of the MRP.⁴⁰ Mr. Nelson testified that the Commission should not feel bound to its reconciliation mechanism from Order No. 89482 because that order was explicitly a pilot order for a single utility, and Baltimore Gas and Electric (“BGE”) and Potomac Electric Power Company (“Pepco”) are already piloting that model of reconciliation mechanism.⁴¹

45. Mr. Nelson also testified that the Company’s proposed BSA should be rejected because the Company’s proposed MRP reconciliation process and the BSA are duplicative and because the Company has not made tangible commitments to advancing public policy

³⁶ OPC Ex. 5, Nelson Direct at 8-9.

³⁷ *Id.* at 8.

³⁸ *Id.* at 9-10.

³⁹ *Id.* at 10-11.

⁴⁰ *Id.* at 11.

⁴¹ *Id.* at 12.

through the BSA, such as load management programs or better integrating distributed energy resources (“DERs”) on its system.⁴²

46. Mr. Nelson testified that the combination of the Company’s proposed reconciliation mechanism and the BSA brings regulatory lag and utility risk close to zero.⁴³ Mr. Nelson testified that a BSA does not remove the utility’s bias toward greater capital investments in infrastructure to grow rate base; however, because increasing demand (which the BSA is intended to reduce) drives the need for infrastructure investments.⁴⁴

47. Mr. Nelson testified that the BSA should incentivize a utility to encourage energy efficiency, load management, DER integration, and other initiatives that further public policy goals while lowering customer demand as reflected in kWh sales.⁴⁵ Mr. Nelson testified that, without a tangible commitment by the Company to pursue implementation of programs designed to meet those public policy goals, they may never be addressed, and the only consequence of the BSA will be to provide revenue stability to the Company.⁴⁶

48. Mr. Nelson quoted from Order No. 89868 the Commission’s directive that in subsequent MRP filings utilities must “fully support the need for any BSA” by addressing certain directives related to the BSA’s role in the specific context of an MRP.⁴⁷ Mr. Nelson testified that, although the Company has identified programs it could pursue, it has not identified tangible, measurable actions to further the public policy goals of the BSA, nor

⁴² *Id.* at 13-14.

⁴³ *Id.* at 22.

⁴⁴ *Id.* at 17.

⁴⁵ *Id.* at 16.

⁴⁶ *Id.* at 23-24.

⁴⁷ *Id.* at 25.

has it produced any data that supports the position that the BSA actually furthers those public policy goals.⁴⁸

3. Staff

49. Staff witness David Hoppock testified that the Commission should retain the BSA during the Company's proposed MRP.⁴⁹ Mr. Hoppock testified that, although a BSA is less necessary in an MRP compared to a historic test year case, the BSA still creates an incentive for the Company to participate in the full deployment of demand side management and energy efficiency programs.⁵⁰ Mr. Hoppock also testified that the BSA will likely reduce the eventual difference between actual and forecast revenue during the MRP, but because of the MRP reconciliation process the decision to use a BSA does not significantly change the risk of billing determinant forecast errors for customers, although the risk of errors is not symmetrical because customers will not earn a return on any overpayment.⁵¹

50. Mr. Hoppock also testified that elimination of the BSA could create volatility in class cost of service studies going forward because of the lack of weather normalization.⁵²

51. Mr. Hoppock also testified that, for future MRP cases, the Commission should require utilities desiring to have a BSA to include the impact of distributed solar and electric vehicle (EV) charging in their examination of under-recoveries over the previous three years, as the Company provided in this case.⁵³

⁴⁸ *Id.* at 24-26.

⁴⁹ Staff Ex. 8, Hoppock Direct at 2.

⁵⁰ *Id.* at 52.

⁵¹ *Id.* at 53, 55.

⁵² *Id.* at 54.

⁵³ *Id.* at 4.

52. Mr. Hoppock testified that, regardless of the Commission’s decision on whether to retain the BSA, the Commission should reconcile actual distribution revenues with forecast revenues at the class level.⁵⁴

53. Staff witness Hoppock testified in rebuttal that he did not agree with OPC witness Nelson’s recommendations that the Commission adopt a one-way reconciliation of revenues in this case and that the Commission reject the Company’s proposal to utilize a BSA.⁵⁵ Mr. Hoppock testified that under a one-way reconciliation with no BSA, the Company would face the risk of under-recovery due to cost forecasts that are less than actual prudent costs, from events such as storms, and billing determinant forecasts that are higher than actual billing determinants, creating an incentive for the Company to over-forecast expenses and under-forecast billing determinants.⁵⁶

54. Mr. Hoppock testified that a one way reconciliation with a BSA would also risk revenue under-recovery in the event of inaccurate customer count forecasts, creating an incentive for the Company to under-forecast customer count.⁵⁷

55. Mr. Hoppock testified that a one-way reconciliation with no BSA would also make future Class Cost of Service Studies (“CCOSS”) more volatile because historic test year revenue in the CCOSS would not be weather normalized.⁵⁸ Mr. Hoppock recommended that the Commission approve the reconciliation process requested by the Company, which

⁵⁴ *Id.* at 2.

⁵⁵ Staff Ex. 9, Hoppock Rebuttal at 8.

⁵⁶ *Id.* at 9-10.

⁵⁷ *Id.* at 10.

⁵⁸ *Id.* at 11.

he testified was functionally identical to the approved language in the BGE and Pepco MRP tariffs.⁵⁹

4. DPL rebuttal

56. In rebuttal, DPL witness Elizabeth O'Donnell testified that OPC witness Nelson was incorrect in his conclusion that DPL had not advanced public policy objectives in its proposed implementation of the BSA.⁶⁰ She testified that, for example, DPL has met or exceeded its energy conservation goals under the EmPOWER Maryland program.

57. Ms. O'Donnell also testified that DPL's proposed reconciliation mechanism would ensure that all parties are made whole for the "rate setting risk that inherently exists" in the MRP construct.⁶¹

58. Also in rebuttal, DPL witness Ziminsky testified that DPL's proposed reconciliation mechanism consists of annual information filings, a consolidated reconciliation review in the next rate case, and a final reconciliation review after the conclusion of the MRP period.⁶² He testified that the reconciliation mechanism is two-way, allowing for corrections of both upward and downward deviations in the final revenue requirement from the Company's authorized revenue requirement.⁶³ He testified that OPC witness Nelson is incorrect that DPL's proposed reconciliation removes cost containment incentives, arguing that DPL has cost containment incentives due to its need to pursue overall financial results and general corporate responsibility.⁶⁴ He also testified that OPC's

⁵⁹ *Id.*

⁶⁰ DPL Ex. 4, O'Donnell Rebuttal at 12.

⁶¹ *Id.* at 13.

⁶² DPL Ex. 14, Ziminsky Rebuttal at 38, 41.

⁶³ *Id.* at 38.

⁶⁴ *Id.* at 40.

proposed one-way reconciliation would run counter to the Commission's prior approval of two-way reconciliations for MRPs.⁶⁵ He also testified that the proposed reconciliation mechanism permits discovery following each annual informational filing to determine whether Commission action is required to correct a significant disparity between revenues and expenses that is to the detriment of ratepayers.⁶⁶

59. DPL witness Blazunas testified that DPL does not oppose Staff's recommendation that any reconciliation be performed at the class level.⁶⁷ Mr. Blazunas also testified that he disagreed with OPC witness Nelson's criticisms of DPL's proposed BSA. He testified that the BSA is not meant to address the utility's capital bias, merely to remove the link between electricity sales and distribution revenues.⁶⁸ He testified that Mr. Nelson incorrectly implies that usage drives capital expenditures.⁶⁹ He also testified that Mr. Nelson misunderstood the complementary relationship between the BSA and the proposed reconciliation process, such as the fact that the BSA likely reduces the size of the revenue reconciliation.⁷⁰ He also testified that Mr. Nelson ignored DPL's efforts and initiatives that justify the BSA's existence because of the incentive it creates for DPL to support them, such as those related to energy efficiency, distributed energy resources, transportation electrification, and innovative rate designs.⁷¹ He also testified that the BSA and reconciliation do not guarantee DPL its authorized rate of return because the Commission

⁶⁵ *Id.* at 41-42.

⁶⁶ DPL Ex. 14, Ziminsky Rebuttal at 39-40.

⁶⁷ DPL Ex. 19, Blazunas Rebuttal at 6.

⁶⁸ *Id.* at 10-11.

⁶⁹ *Id.* at 11.

⁷⁰ *Id.*

⁷¹ *Id.* at 11-12.

will review any imbalances in the revenue requirement, and because of the asymmetric recovery mechanism in the reconciliation.⁷² He also testified that table 12 of Staff Witness Hoppock’s direct testimony shows that the primary drivers of BSA under-recoveries are energy efficiency and distributed solar.⁷³

60. DPL witness Morlon Bell-Izzard described the Company’s historic and ongoing efforts with respect to statewide conservation goals.⁷⁴ He testified that DPL exceeded its 2018-2020 EmPOWER Maryland energy reduction goal and is on track to meet its 2021-2023 goals.⁷⁵ He testified that DPL is also leading the management of a statewide market potential study, initiated by the Commission and currently conducted by a third-party vendor, to determine the full potential for greenhouse gas reductions for the next EmPOWER cycle.⁷⁶ He also testified that, at Commission direction, DPL calculated that its programs have abated 132,323 metric tons of CO2 equivalent.⁷⁷

B. Commission Decision

61. In Order No. 89482, the Commission set forth the expected parameters of an initial Pilot application for a single utility to test the use of an MRP as an alternative to traditional ratemaking methods.⁷⁸ In that Order, the Commission found that continuing the use of the BSA for the Pilot would be reasonable, noting that the BSA has historically smoothed the impacts of weather on utility revenues and reduced utility disincentives for providing

⁷² *Id.* at 13.

⁷³ *Id.* at 14-15.

⁷⁴ DPL Ex. 11, Bell-Izzard Rebuttal at 5-6.

⁷⁵ *Id.* at 5.

⁷⁶ *Id.* at 5-6.

⁷⁷ *Id.* at 6.

⁷⁸ Case No. 9618, Order No. 89482, the MRP Pilot Order.

energy efficiency programs. The Commission also required that the Pilot application should contain a two-way asymmetric reconciliation.

62. Later that year, BGE filed an application to serve as the Pilot utility and requested rates be set under the terms of Order No. 89482, including a BSA and a two-way asymmetric reconciliation. No party objected to BGE's MRP application containing a BSA and two-way asymmetric reconciliation, and those provisions were included in the Pilot MRP, Case No. 9645.

63. That same year, Pepco filed an application for MRP rates, also requesting a BSA and two-way asymmetric reconciliation. Although the Commission again approved the BSA and reconciliation as requested, in that case, the Commission noted concerns about the usefulness of a BSA in a forecasted rate environment:

The record in this MRP application raises serious questions about the continued need, role, and structure of a BSA mechanism in a forward-looking rate proposal. While a BSA is intended to minimize different types and amounts of risk, when proposed rates are premised on forecasts, utilities should incorporate known changes into their forecasting to further minimize the level of risk exposure. For example, expected efficiency gains from approved programs should be incorporated into forecasts to minimize shifting risks to ratepayers.⁷⁹

64. The Commission then directed that, “[i]n subsequent MRP filings, the Commission expects utilities to fully support the need for any BSA that will be effective during the rate-effective period or remove the BSA altogether.”⁸⁰ The Commission also set forth a

⁷⁹ Order No. 89868 at 207-08.

⁸⁰ *Id.*

minimum evidentiary level of production that a company must include in its MRP application for a BSA to be considered.⁸¹

1. Bill Stabilization Adjustment

65. There is no genuine dispute that DPL has met the minimum production outlined in Order No. 89868⁸² or that the reconciliation mechanism proposed by DPL is identical to that approved by the Commission in its prior two MRP cases. OPC disputes, however, that DPL has met its statutory burden of proof as to the reasonableness for the BSA and the two-way reconciliation in this MRP.

66. Preliminarily, the Commission notes that the settled matters include the revenue requirement, which itself depends on an estimation of the financial risks taken by DPL. The parties are now seeking a Commission determination of issues that are materially and causally linked to the amount of financial risk DPL will undertake in providing utility service at the settled rates.

67. Regarding the BSA, the central dispute between the parties is whether the BSA is still useful in a forecasted ratemaking environment. As the Commission identified in its concerns in Order No. 89868, a principal function of the BSA has been to disconnect utility

⁸¹ *Id.* (“The application should explain the intent and design of the BSA in the specific context of a forward-looking MRP. Further, the applicant should delineate specifically how the BSA and any risks of forecasting errors interact. Additionally, MRP applicants should provide a breakdown of what is responsible for any revenue under recoveries over the previous three years, similar to the information Pepco provides in its annual reports to the District of Columbia Public Service Commission. Finally, any MRP application that uses a revenue adjustment mechanism, such as Pepco’s effective BSA, when designing rates to maintain class revenue between forecast years shall include an exhibit that compares the resulting revenues (in rate design) to the authorized revenues. This exhibit should explicitly show that the revenue adjustment mechanism (e.g. BSA) is cost neutral and does not increase or decrease the MRP applicant’s final revenue requirement after designing rates.”)

⁸² The Commission notes that DPL witness Blazunas addressed those requested issues in his Direct Testimony, DPL Ex. 18 at 19-27.

revenues from individual consumer behavior, most notably behavior caused by weather variation and public policy initiatives to reduce energy usage and improve energy efficiency.

68. The Commission notes OPC's concern that the historic bargain that justified the existence of the BSA – with customers accepting variation in rates in return for improving the utility incentive structure in ways that favor public policy goals – may look different in a forecasted ratemaking environment where public policy programs can be forecasted. OPC argues that under a forecasted ratemaking approach, and where public policy programs are mandated by the Commission or statute, the utility's incentive to increase customer sales is neutralized without the need for the BSA. OPC argues that Delmarva has not included in its BSA a replacement structure to incentivize further progress toward public policy goals and that Delmarva unreasonably seeks to preserve the BSA because it shifts the risk of forecasting error from Delmarva to ratepayers.⁸³

69. At the same time, the Commission notes that, under historic ratemaking, the BSA has normalized weather variability and corrected under-recovery driven by Commission programs supporting major state priorities such as energy efficiency and renewable resource adoption. The Commission also notes the arguments of Staff and DPL that forecasts are not perfect. As such, removing the BSA would create undesirable utility incentives, even under a forecasted ratemaking paradigm. The Commission also notes the arguments of DPL and Staff that removing the BSA would make future cost of service

⁸³ Maillog No. 242888, OPC Opening Brief at 10-13.

studies more volatile, thereby compromising the Commission's objective of setting cost-based rates.

70. In weighing the arguments of OPC against those of Staff and DPL, the Commission finds that the present record is largely speculative about the functioning of a BSA under forecasted ratemaking, with parties in disagreement about the theoretical incentives of the different proposed alternatives based on little real-world data.

71. That conflicted record confirms that Maryland's foray into the world of forecasted ratemaking remains, at this point, experimental, with only two forecasted rate cases yet approved and none completed. The Commission and stakeholders are engaged in ongoing discussions about the lessons learned from the Pilot MRP case with an eye toward further refinements as the Pilot progresses through its anticipated phases.⁸⁴ The Commission will take action to address the BSA mechanism if the identified issues progress from theoretical to actual problems.

72. In the present case, however, the Commission finds that DPL has adequately responded to the Commission's directive in Case No. 89868, and that the use of the BSA in forecasted rate cases should be allowed to continue. The Commission is satisfied that the BSA serves important roles in reducing weather related revenue fluctuations, removing disincentives to pursue current state policy goals, reducing volatility in ratemaking, and providing customer protections when utilities over collect.

⁸⁴ See e.g., Case No. 9645, Order No. 90401.

2. Reconciliation Mechanism

73. The dispute over DPL's proposed reconciliation process raises similar arguments to those made regarding the BSA. In Order No. 89482, the Commission established an asymmetrical two-way reconciliation for the Pilot MRP in order to encourage cost control and keep risks of forecasting error on the utility.⁸⁵ Now OPC argues that the asymmetrical reconciliation approved in Order No. 89482, and applied in the Commission's prior two MRP orders, does not sufficiently overcome the utility's incentive to invest imprudently in order to increase future rate base from which the utility generates revenue. OPC argues that the prudence review designed by the Commission is unlikely to function as intended and that recovery of imprudent utility spending will nonetheless be approved. Based on its assumption that the prudence review will not serve to protect ratepayers, OPC argues that the effect of the asymmetrical reconciliation (along with the BSA) amounts to an improper guarantee of a utility's rate of return.

74. In Order No. 89482, the Commission explained that approval of forecasts in a forecasted rate case will not be considered pre-approval of expenditures or projects and would serve only as a guide in conducting the final prudence analysis.⁸⁶ The Commission has confidence that the prudence review can be conducted effectively.

75. The Commission is also concerned by Staff's prediction that adoption of OPC's one-way reconciliation, containing no protection against under-collection, would incentivize gamesmanship and dishonesty by utilities in their forecasting. Utilities could intentionally push forecasts higher as a cushion against under-collection. If the

⁸⁵ Order No. 89482 at 39.

⁸⁶ *Id.* at 24.

Commission were to approve an inflated forecasted revenue requirement as part of an initial rate case, the utility might then have an incentive to increase spending to match inflated forecasts, risking inflating costs to ratepayers. Additionally, if the increased utility spending is later found imprudent by the Commission, the reconciliation amount will be larger and utility credibility damaged.

76. The Commission has carefully considered and balanced the utility incentives and ratepayer benefits in designing the MRP pilot structure and associated reconciliations. At this time, before any reconciliations have been conducted, the Commission finds that DPL's proposed reconciliation mechanism is appropriate and will lead to just and reasonable rates.

IT IS THEREFORE, this 14th day of December, in the year Two Thousand Twenty-Two, by the Public Service Commission of Maryland, **ORDERED** that:

(1) The Application of Delmarva Power & Light Company, filed on May 19, 2022, seeking a multi-year plan requesting electric rates to be effective January 1, 2023, January 1, 2024, and January 1, 2025, is denied;

(2) The Joint Motion for Approval of a Unanimous Stipulation and Partial Settlement Agreement is granted subject to the conditions herein;

(3) Delmarva's request to include in this MRP a Bill Stabilization Adjustment and two-way reconciliation, as described above, is granted;

(4) Delmarva is directed to file tariffs in compliance with this Order with the effective dates prescribed herein, subject to acceptance by the Commission; and

(5) All motions or requests not granted herein are denied.

/s/ Jason M. Stanek _____

/s/ Michael T. Richard _____

/s/ Anthony J. O'Donnell _____

/s/ Odogwu Obi Linton _____

/s/ Patrice M. Bubar _____

Commissioners