ORDER NO. 90546

The 2021-2023 EmPOWER Maryland Program	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9648

Issue Date: March 20, 2023

ORDER ON GOAL-SETTING FOR FUTURE EMPOWER MARYLAND PROGRAM CYCLES

1. On February 2, 2023, the Commission held a legislative-style hearing[1] in the above-captioned case to review, *inter alia*, reports on future goal-setting as directed by Order No. 90261.[2] The reports included the Maryland Greenhouse Gas ("GHG") Abatement Study Draft Results[3] and Final Results,[4] the Maryland Energy Affordability Study,[5] and the Future Programming Work Group Phase II Report.[6]

[1] Notice of the hearing date and comment period for this matter was provided on January 19, 2023 (Maillog No. 300946).

[2] Maillog No. 241115: Order No. 90261 (June 15, 2022), modified in part by Maillog No. 241513 (July 18, 2022).

[3] Maillog No. 300123: Applied Energy Group's ("AEG") Maryland GHG Abatement Study - Draft Results (November 14, 2022); corrected by Maillog No. 300426 (December 8, 2022).

[4] Maillog No. 300751: AEG's Maryland GHG Abatement Study - Final Report ("GHG Abatement Study") (January 6, 2023).

[5] Maillog No. 300518: Applied Public Policy Research Institute for Study and Evaluation ("APPRISE") Maryland Energy Affordability Study - Final Report ("Energy Affordability Study") (December 15, 2022).

[6] Maillog No. 300881: Future Programming Work Group Phase II Report ("Phase II Report") (January 13, 2023).

2. The Commission reviewed comments pertaining to the reports as filed by the Joint Utilities,[7] the Commission's Technical Staff ("Staff"),[8] the Maryland Office of People's Counsel ("OPC"),[9] the Maryland Energy Administration ("MEA"),[10] the Maryland Energy Efficiency Advocates ("MEEA"),[11] Montgomery County, Maryland,[12] Washington Gas

[7] Maillog No. 300674: Joint Comments of Baltimore Gas and Electric Company ("BGE"), Potomac Electric Power Company ("Pepco"), Delmarva Power & Light Company ("Delmarva Power"), The Potomac Edison Company ("Potomac Edison"), Washington Gas Light Company ("Washington Gas"), and Southern Maryland Electric Cooperative ("SMECO") (collectively, "Joint Utilities") on the GHG Abatement Potential Study (December 30, 2022), corrected by Maillog No. 300705 (January 3, 2023).

[8] Maillog No. 300679: Staff Comments on the Energy Affordability Study (December 30, 2022); Maillog No. 300686: Staff Comments on the EmPOWER Maryland Potential Study (December 30, 2022); Maillog No. 301059: Staff Comments on the Maryland GHG Abatement Goals ("Staff GHG Goal Comments") (January 27, 2023); Maillog No. 301833: Loper Energy Excel Files (March 15, 2023).

[9] Maillog No. 30687: OPC Comments on the GHG Abatement Potential Study ("OPC Comments on the GHG Abatement Study") (December 30, 2022); Maillog No. 300689: OPC Comments on the APPRISE Energy Affordability Study (December 30, 2022); Maillog No. 301064: OPC Comments on EmPOWER Goals for the 2024-2026 Program Cycle ("OPC Comments on Goal-Setting") (January 27, 2023); Maillog No. 301365: OPC Post-Hearing Comments Regarding GHG Abatement Goal-Setting (February 16, 2023); Maillog No. 301790: OPC Surreply to Exelon Utilities' Comments in Reply to OPC's Post-Hearing Comments (March 14, 2023).

[10] Maillog No. 300680: MEA Comments on the GHG Abatement Study (December 30, 2022); Maillog No. 301136: MEA Comments on Goal Structure and Level for the Next Cycle of the EmPOWER Program ("MEA Goal Comments") (February 1, 2023).

[11] Maillog No. 300682: MEEA Comments on EmPOWER Maryland GHG Abatement Potential Study (December 30, 2022); Maillog No. 300683: MEEA Comments on Maryland Energy Affordability Study Final Report ("MEEA Comments on the Energy Affordability Study") (December 30, 2022); Maillog No. 301061: MEEA Comments on EmPOWER Maryland Future Programming Work Group Report - Phase II ("MEEA Phase II Report Comments") (January 27, 2023).

[12] Maillog No. 300688: Montgomery County, Maryland Comments on EmPOWER Maryland Limited-Income Programs Maryland Energy Affordability Study - Final Report ("Montgomery County Comments on the Energy Affordability Study") (December 30, 2022); Maillog No. 300690: Montgomery County, Maryland Comments on Maryland GHG Abatement Study - Final Results (December 30, 2022); Maillog No. 301056: Montgomery County, Maryland Comments on EmPOWER Maryland Goals ("Montgomery County Goal Comments") (January 27, 2023).

Light Company ("WGL"),[13] Fermata Energy,[14] Potomac Edison and SMECO,[15] the Exelon Utilities,[16] Oracle/Opower,[17] and Edison Electric Institute.[18]

3. The Commission also reviewed responses from MEA[19] and SMECO[20] to bench data requests made during the February 2 hearing, as well as a status report filed by Staff on behalf of the EmPOWER Reporting and Process Improvement Work Group.[21]

4. The filings analyzed the findings within the GHG Abatement Study and the Energy Affordability Study, as well as recommendations put forth by the Future Programming Work Group and stakeholders regarding goal-setting for the 2024-2026 EmPOWER program cycle, among other things. The February 2 hearing provided an opportunity for the Commission to receive additional testimony from, and ask questions of, parties and stakeholders. Upon review of the filings and the requests presented, the Commission makes the following determinations, among others, as more fully discussed below: the utilities and DHCD are to file 2024-2026 proposed plans by August 1, 2023, and comments on the proposed plans are to be filed by October 15, 2023.

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[13] Maillog No. 300961: WGL Comments on EmPOWER FPWG Recommendations ("WGL Comments") (January 20, 2023).
[14] Maillog No. 301046: Fermata Energy Comments on EmPOWER Maryland Goal-Setting (January 26, 2023).
[15] Maillog No. 301053: Joint Comments of Potomac Edison and SMECO on EmPOWER Utility Goals for the 2024-2026 EmPOWER Program Cycle ("Potomac Edison and SMECO Joint Comments") (January 27, 2023).
[16] Maillog No. 301060: Comments of BGE, Delmarva Power, and Pepco (collectively, "the Exelon Utilities") on the EmPOWER Future Programming Work Group Phase II Report ("Exelon Utilities Comments") (January 27, 2023); Maillog No. 301630: The Exelon Utilities' Reply to OPC's Post-Hearing Comments (March 3, 2023).
[17] Maillog No. 301062: Oracle/Opower's Comments on EmPOWER Maryland Future Goal Setting (January 27, 2023).
[18] Maillog No. 301208: Edison Electric Institute Comments (February 8, 2023).
[19] Maillog No. 301204: MEA Response to Bench Data Request (February 7, 2023).
[20] Maillog No. 301273: SMECO Response to Bench Data Request (February 11, 2023).
[21] Maillog No. 301405: EmPOWER Reporting and Process Improvement ("ERPI") Work Group Status Report (February 17, 2023).

I. GOAL-SETTING: GREENHOUSE GAS REDUCTION

A. Background

5. In Order No. 90261, the Commission found that the Future Programming Work Group[22] had reached a partial consensus on the goal structure for the EmPOWER cycle beginning in 2024.[23] The Work Group agreed that the program should transition from the current measurement of targeted electrical or gas savings to the measurement of targeted GHG reductions.[24] The Work Group also agreed that goals can be achieved through various behind-the-meter ("BTM") and front-of-the-meter ("FTM") programs as well as non-energy sources, but no agreement was reached on the specific percentages that should be allocated to BTM resources, FTM community and utility resources, and non-energy resources.[25]

6. The Work Group agreed on the following four "straw" goals for the utilities to achieve the targeted GHG reductions:

> i. At least X% of a utility's total GHG abatement goal be achieved through BTM and FTM community programs funded by EmPOWER based upon a utility-specific study, and that a minimum of X% of EmPOWER-funded BTM energy efficiency programs also based upon the referenced study.
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> ii. A maximum of X% of a utility's total GHG abatement goal would be met with either non-energy resources or FTM utility resources, subject to the Commission's approval of the specific program(s) or initiative(s).

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[22] In Order No. 89679, issued on December 18, 2020, the Commission created the Future Programming Work Group to assist with the development of the next EmPOWER cycle beginning in 2024, including the consideration of a new goal structure, among other matters.

[23] Order No. 90261 at 23.

[24] The Work Group recommended that the reductions be evaluated on a gross-lifecycle basis with a predefined GHG abatement trajectory (i.e., tons of GHG per kilowatt-hour ("kWh") for each year over the lifetime) and measure lifetime. *Id*.

[25] *Id*.

iii. Contributions to the GHG abatement goal through other initiatives, such as those that align with Public Conference ("PC") 44, could be included in each utility's specific plan. However, those initiatives must be BTM and FTM community resources that are not EmPOWER-funded and are subject to the Commission's approval.

iv. A minimum of X% be focused on the utilities' respective low-income customers and communities.[26]

7. The Work Group suggested that the specific percentages within the utility goals be determined by the Commission at a later date, when more information becomes available from sources including the GHG Abatement Study.[27]

8. In Order No. 90261, the Commission approved the Work Group's proposal to transition from targeted electrical or gas savings to targeted GHG reductions, as well as the Work Group's proposed goal structure and straw goals (i), (ii), and (iii).[28] The Commission also noted that a goal-setting proceeding would be "essential to the establishment of ambitious but achievable goals heading into the 2024 EmPOWER cycle,"[29] and expressed optimism that the GHG Abatement Study would provide data that would assist with determining the BTM and FTM program percentages included in the consensus goals.[30]

B. GHG Abatement Study

9. On January 6, 2023, the final report from the Applied Energy Group ("AEG") Maryland GHG Abatement Study was filed.[31] It analyzed three different levels of potential

[26] *Id*. at 23-24.
[27] On October 20, 2021, the Commission approved the Work Group's Request to Issue a Request for Proposal for a Potential Study to Assist the Development of Future EmPOWER Maryland Goals, with the Study intended to provide the Commission with key data to assist with setting the GHG abatement goal. *Id*. at 24.
[28] *Id*. at 26. Straw goal (iv) was denied by the Commission. *Id*. at 29.
[29] Order No. 90261 at 27.
[30] *Id*. at 26.
[31] Maillog No. 300751.

reductions: 1) Technical Potential, which includes GHG abatement opportunities that are feasible; 2) Economic Potential, which includes GHG abatement opportunities that are feasible and cost-effective; and 3) Achievable Potential, which includes GHG abatement opportunities that are feasible, cost-effective, and attainable.[32]

10. Three sub-scenarios within the Achievable Potential were also considered: 1) Achievable Potential - Business As Usual ("BAU"), which assumes the continuation of current EmPOWER programs at similar spending levels; 2) Achievable Potential - Maximum, which attempts to identify maximum savings if programs are unconstrained by current scope or spending levels; and 3) Achievable Potential - GHG Goal Achievement, which assesses the utilities' ability to reach GHG reduction goals if cost-effectiveness restrictions were loosened.[33]

11. The GHG Abatement Study did not consider FTM, industrial electrification, transportation electrification, or electric generation from BTM measures as part of its assessment,[34] nor did it provide budget estimates for any of the scenarios.

12. Certain adjustments to the GHG Abatement Study were made by the Commission's independent evaluator, Loper Energy, in order to better reflect the EmPOWER Maryland program (hereinafter referred to as "Loper Adjustments").[35] The Loper Adjustments

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[32] GHG Abatement Study at 4.
[33] *Id*.
[34] *Id*. at 2.
[35] Tr. 65:6-9, 66:6-9. The Commission notes that no filing containing the Loper Adjustments was made with the Commission prior to the February 2 hearing, at which the following exchange occurred: Commissioner Bubar: "The Commission has not seen what you prepared, so that wasn't provided to us. So I would like to make a request that we actually see that report." Mr. Loper: "It was not a report… They're all in spreadsheets." Commissioner Bubar: "I would like to make a request that we receive the spreadsheets and the documentation that you have - that you do have that had been prepared." Tr. 64:1-21. On March 15, 2023, Staff filed three Excel files from Loper Energy, titled Utility Share of Sales, GHG Abatement Summary Potential Sector Scenarios, and Energy Efficiency. (Maillog No. 301833).

included the following: 1) The GHG Abatement Study used gross savings when performing the cost-effectiveness analysis, while the Loper Adjustments used net savings in keeping with past EmPOWER analyses;[36] 2) the GHG Abatement Study performed its cost-effectiveness analysis at the measure level, whereas the Loper Adjustments did so at the portfolio level;[37] and 3) the GHG Abatement Study included certain lighting and appliance measures in its analysis whereas the Loper Adjustments did not.[38]

C. Utility and Stakeholder Positions

13. Filings from the utilities and stakeholders focused primarily on the BAU and Maximum Achievable scenarios presented in the GHG Abatement Study,[39] but with the Loper Adjustments. Potomac Edison and SMECO advocated for following the adjusted BAU scenario, claiming it is the only approach that balances uncertainties with the potential studies, challenging economic conditions, market conditions, unpredictable adoption rates and costs, and customer bill impacts.[40] Due to these uncertainties, Potomac Edison and SMECO claim no other target than BAU can be established.[41]

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[36] "Gross savings is the savings that would occur as a result of the measures that were installed from the program... some measures that were installed by people who participated in the program and got a rebate would've… taken those actions anyway… We do not use gross savings for cost-effectiveness. We use net savings." Tr. at 56:20-57:21.

[37] "Since 2016… the cost-effectiveness would be based on the portfolio cost-effectiveness. Which means you could have - which means you could have a lot of measures in there that are not cost-effective on their own, but as long as you have other measures that make up for that lack of cost-effectiveness, then they can go in, so you can get a lot bigger portfolio with a portfolio cost-effectiveness test than you can with a measure level cost-effectiveness test." Tr. 58:4-13.

[38] "They included quite a bit of residential LEDs… from the fall hearing has been [a] clear decision by the Commission, and with the support of stakeholders, that those lamps probably don't need to be in portfolios anymore… The second thing we took out was commercial desktop computers… I think it was probably a legacy measure from somewhere else, but probably, at least, didn't make sense here in Maryland." Tr. 58:21-59:4, 59:19-60:4.

[39] Tr. 66:10-13, 68:1-6.

[40] Potomac Edison and SMECO Joint Comments at 5-6.

[41] *Id*. at 6.

14. OPC advocated for some form of the Maximum Achievable scenario, claiming that it includes cost-effective measures and savings that are achievable with best practices and incentives.[42] OPC argued, along with Montgomery County, that requiring the utilities to develop aggressive programs is the only way to demonstrate what is needed to achieve these more aggressive standards, which cannot be done without plans and costs.[43]

15. Montgomery County and MEEA advocated for something in between the BAU and Maximum Achievable scenarios, or a combination of the two, depending upon the fuel type.[44] Montgomery County advocated for the utilities to develop two scenarios, one to achieve the Commission's chosen goals in this proceeding and the other to meet the Maximum Achievable scenario in order to inform both the Commission and the Legislature for future policy making purposes.[45] Montgomery County found this option to be the best balance between working toward state climate goals and minimizing customer bill impacts, pointing out that scaling up EmPOWER "will likely be a critical component of any future State strategy to achieve the [State's] 60% by 2031" reduction goal.[46]

16. The Exelon Utilities oppose the effort and expense of planning for higher standards while expecting to then modify the utility plans at a later date, claiming that development approach would require higher effort and cost.[47] The Exelon Utilities did not state where among the BAU and Maximum Achievable scenarios their proposal fell, but noted that they "used several data points including historical EmPOWER planning and program

[42] OPC Comments at 8.
[43] Tr: 134:16-23, 135:1-3; Tr: 147:16-23, 148:1-8.
[44] Montgomery County Goal Comments, pages 11-12; MEEA Comments at 6.
[45] Montgomery County Goal Comments at 12; MEA Goal Comments at 4.
[46] Montgomery County Goal Comments at 10-12.
[47] Exelon Utilities Comments in Reply to OPC's Post-Hearing Comments at 5-6.

performance, the AEG Potential Study, and additional analysis performed on the results of the AEG Potential Study by Loper Energy LLC" when developing the proposal.[48]

17. WGL chose to take no position at all, claiming that the GHG Abatement Study utilized "certain assumptions that are a cause for concern."[49] MEA also chose to abstain from taking a position, noting that the lack of a formal budget and rate impact review in the GHG Abatement Study presented a significant challenge to determining appropriate goals for the EmPOWER program going forward.[50]

18. Some parties advocating for higher goals raised concerns with utilizing ratepayer dollars to fund these programs. Montgomery County, recognizing the balance that the Commission is required to strike between pursuing greater GHG reductions against ratepayer impacts, stated:

> "The County does not believe that the EmPOWER surcharge should be viewed as the only source of revenue for an expanded EmPOWER program. The County would prefer an alternative, more equitable approach to obtaining the revenue needed to support a scaled-up approach to EmPOWER, such as the use of taxpayer dollars rather than surcharges, which are applied to all customers in a certain customer class without consideration of income."[51]

OPC had similar cost concerns when advocating for pursuing aggressive electrification goals. "EmPOWER funding - nor ratepayers in general - should not be expected to support the full cost of achieving these savings. Maryland policymakers must find multiple sources

[48] Exelon Utilities Comments at 9-10.
[49] WGL Comments at 3.
[50] MEA Goal Comments at 4.
[51] Montgomery County Goal Comments at 11.

of funding - and complementary policies - to capture the full cost-effective efficiency and electrification opportunity."[52]

19. The utilities and stakeholders had less varied positions on the percentages that should be attributable to BTM and FTM community programs funded by EmPOWER versus either non-energy resources or FTM utility resources. All parties support either 80 or 85 percent of EmPOWER goals be met using BTM and FTM community resources, the only nuance being how such goals were funded.

20. OPC recommended a minimum of 85 percent of any GHG goal be achieved through BTM and FTM community programs funded by EmPOWER, with the remaining 15 percent coming from FTM utility resources.[53] Staff recommended a minimum of 80 percent of the GHG abatement goal be achieved through BTM and FTM community programs funded by EmPOWER, with the remaining 20 percent coming from FTM utility resources.[54] WGL did not submit a goal percentage proposal for consideration and remained neutral on the proposals put forth by others.[55]

21. The Exelon Utilities proposed a minimum of 80 percent of the GHG abatement goal be achieved through BTM and FTM community programs funded by EmPOWER or a utility's base rates, with a minimum of 50 percent of the 80 percent achieved through BTM energy efficiency resources funded by EmPOWER.[56] This differs from the previously noted goal structure consensus reached by the Future Programming Work Group. In

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[52] OPC Comments at 3-4.
[53] OPC's recommendation was supported by MEEA, Montgomery County, and the American Council for an Energy-Efficient Economy ("ACEEE"). Phase II Report at 6-7.
[54] Staff's recommendation was supported by MEA, Potomac Edison, and SMECO. Phase II Report at 8-9.
[55] *Id*. at 11.
[56] No other stakeholder expressed support for the Exelon Utilities' proposal; rather, OPC, MEEA, Montgomery County, and ACEEE noted concerns with the proposal. *Id*. at 9-11.

support of its deviation, the Exelon Utilities argue that additional flexibility beyond the consensus goal structure is required to meet GHG abatement goals and mitigate cost burdens to customers that would result from the move to expensing all EmPOWER costs.[57] The Exelon Utilities further explained that their request to allow a percentage of program costs to be recovered through base rates is to "prevent any limitations on the Exelon Utilities' ability to offer innovative programming that would otherwise be cost prohibitive."[58]

D. Commission Decision

22. The passage of the Climate Solutions Now Act of 2022 ("CSNA")[59] brought both additions and amendments to the EmPOWER Maryland Program. In short, it created an additional 2024-2026 program cycle requiring increased annual incremental gross energy savings,[60] and modified the core objective of the program from electricity reduction to "a portfolio of mutually reinforcing goals, including [GHG] emissions reduction, energy savings, net customer benefits, and reaching underserved customers."[61]

23. The Future Programming Work Group took these changes into account when developing the consensus goal framework that transitions from the measurement of targeted electrical or gas savings to the measurement of targeted GHG reductions for future EmPOWER cycles. The Commission notes that, while the February 2 hearing and its

[57] Exelon Utilities Comments at 5.
[58] *Id*.
[59] https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/sb0528?ys=2022RS.
[60] Based on an electric company's 2016 weather-normalized gross retail sales and electricity losses, the company is required to produce 2% gross energy savings per year from 2022 through 2024, 2.25% per year in 2025 and 2026, and 2.5% per year in 2027 and thereafter. *Md. Ann. Code*, Pub. Util. Art ("PUA") § 7-211(g)(2).
[61] PUA § 7-211(g)(2)(v).

associated filings focused on the GHG reduction goals, the utilities are still statutorily required to meet annual gross energy savings benchmarks, and the Commission is still statutorily required to determine what programs and services appropriately, and cost-effectively, encourage and promote the efficient use and conservation of energy.[62] The decisions and directions given by the Commission in this Order are based upon consideration of all statutorily required factors and goals.

24. The EmPOWER Maryland Program is at a pivotal point in its existence. While energy efficiency remains important and statutorily required, current climate challenges bring a crucial new focus from less energy usage to smarter energy usage. The Commission must balance GHG abatement with the need to meet the statutory energy savings goal, while also mitigating the associated costs imposed on ratepayers.[63] The February 2 hearing and its associated filings were intended to assist with finding such balance in the development of future goals for the EmPOWER Maryland program.

25. Several unknown and unquantified variables surround the formation of the specific GHG reduction goals. Fluctuations in economic and market conditions, ongoing revisions to codes and standards, the transition to a GHG reduction goal structure, the potential for the inclusion of electrification programs, and the lack of predictability with program adoption rates by customers are just a few.[64] These unknowns make the goal-setting process challenging; however, the lack of cost information is the most significant obstacle.

[62] PUA § 7-211(b)(1).

[63] The Commission must consider cost effectiveness, rate impacts, impacts on jobs, and impacts to the environment when approving EmPOWER programs in accordance with PUA § 7-211 (7)(i)(1).

[64] *See*, *e.g.*, Potomac Edison and SMECO Joint Comments at 4-5.

26. The GHG Abatement Study did not analyze program costs or rate impacts to customers.[65] Neither did the Loper Adjustments or any of the pre-hearing filings. The absence of this important information was discussed at the February 2 hearing but was not corrected during the proceeding. While the Exelon Utilities filed post-hearing comments on March 3, 2023, that contained bill impact figures, there remains little program cost or rate impact data in the record as it pertains to GHG reduction goal-setting.[66] Also, some parties indicated that non-ratepayer funds are likely necessary to afford decarbonization through EmPOWER-like programs. While this would be an innovative step to further meet the State's policy goals, it also creates further uncertainty when setting a goal structure, as the Commission cannot guarantee requisition of funds from other sources.

27. The Commission also notes the absence of supporting data for several filings made regarding goal-setting. In addition to no report, documents, or spreadsheets having been filed in support of the Loper Adjustments ahead of the February 2 hearing,[67] others - including MEEA, the Exelon Utilities, and OPC - proposed specific GHG reduction goals without providing clear data in support of the proposals.[68]

28. The GHG Abatement Study and associated filings are just one piece in the goal-setting puzzle. With program offerings, cost information, and ratepayer impacts missing, undertaking the inherently complex process of setting GHG goals would be premature at

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[65] Maillog No. 237108: "Additionally, for each potential level (excluding Technical Potential), the Contractor should determine estimates of budgets, energy, demand and GHG savings achieved, total annual and lifetime measure benefits realized, and ratepayer impacts." Maillog No. 237108: EmPOWER Maryland Future Programming Work Group Request for Proposals - Potential Study at 7 (September 21, 2021); Tr. 25:6-17.

[66] MEA conducted "an informal review of some program costs on some of the [GHG Abatement Study] scenarios." MEA Goal Comments at 5.

[67] *See* fn.35.

[68] MEEA Phase II Report Comments at 6; OPC Comments on Goal-Setting at 20; Exelon Utilities Comments at 11.

this time. The Commission needs more information before substantive decisions can be made regarding specific goals for future EmPOWER cycles.

29. Setting goals in the absence of program budgets and costs, which will only be available once plans have been drafted and estimated costs are clearer, would not allow the Commission to control ratepayer impacts. The Commission therefore directs the utilities and the Maryland Department of Housing and Community Development ("DHCD") to develop program plans for the 2024-2026 EmPOWER Maryland program cycle in accordance with the parameters outlined in this Order. Once plans are filed, the Commission will be able to weigh the specific costs, benefits, and other required factors of the plans, including cost-effectiveness and the impact on rates, jobs, and the environment.[69] The Commission may make adjustments at that time, including to goal quantities, if necessary.

30. The utilities are directed to prepare three-year plans for the 2024-2026 program cycle designed to achieve electricity savings and GHG savings targets as described below. Electricity savings targets shall be measured compared to the baseline of utility sales in 2016. GHG shall be measured on a lifecycle basis as CO2 equivalent, using the methods and calculations used by the GHG Abatement Study, with the Loper Adjustments. Assumptions used must be universal across the utilities. Any requests for adjustments to these assumptions must be made by the EM&V Work Group by May 1, 2023.

31. The utilities are to file three separate plans, all of which shall, at a minimum, achieve the energy reductions required by PUA § 7-211(g)(2). The first plan is known as

[69] PUA § 7-211(i)(1).

the "2023 Scenario,"[70] which is based on the GHG Abatement Study's BAU scenario and is intended to estimate GHG reduction from current EmPOWER programs and spending levels, in compliance with current statutory requirements. This will serve as an observable starting point, as it is the scenario based on the most certain data available. If the 2023 Scenario cannot meet current statutory requirements based on the GHG Abatement Study's BAU scenario, then the 2023 Scenario shall include costs and programs such that the statutory requirements would be met at the lowest possible cost.

32. The second plan is known as the "Maximum Scenario," which is based on the GHG Abatement Study's Achievable - Maximum scenario and is intended to include programs and measures that would bring maximum savings when spending is unconstrained. To the extent that additional funding would be required for programs and measures, the utilities must identify, in detail, the amount of additional funding necessary and any source(s) or potential source(s) of such funds.

33. The third plan is known as the "Middle Scenario," which is based on parameters that fall in between the 2023 and Maximum Scenarios and is intended to estimate GHG reduction levels associated with programs and measures that are amplified beyond the 2023 Scenario, while still being cognizant of funding constraints.

34. The plans should contain innovative programs and measures that are designed to meet aspirational but achievable goals. Because it is substantially easier to adjust plans

[70] In addition to finding the label "Business as Usual" to be pejorative, the Commission notes that BAU is not an accurate reflection of the programming that precedes the 2024-2026 program cycle. For example, the GHG Abatement Study's BAU scenario included certain lighting and electronics measures that have been or will be phased out of the utilities' 2023 programs, did not account for current electrification measures, and did not consider the CSNA savings targets. The scenario based on current programming is instead to be referred to as "the 2023 scenario" moving forward so as to better reflect the time period and program structure that the scenario is modeled on.

downward than to order that programs be expanded beyond their original design, the utilities should develop and present ambitious, creative, and forward-thinking plans for the Commission's consideration.

35. The Commission notes the Exelon Utilities' concerns regarding the effort and cost to develop and scale back programs, but establishing program goals will require a thorough understanding of programs, costs and ratepayer impacts. Considering the information in these three plans will allow for a thoughtful analysis of how to utilize the EmPOWER program to further the State's climate goals. Additionally, providing these three scenarios in conjunction should help minimize the redesign of programs, and the potential for an associated delay in services once the Commission issues its final decision.

36. Each scenario must contain thorough cost-benefit and bill impact analyses performed by its respective utility. Scenarios that involve the use of outside funds must designate the source, amount, and purpose of the funds. Scenarios must be modular and categorize measures by energy efficiency, demand response, and electrification, and they must differentiate between gas and non-gas appliance rebates. Finally, each scenario must be designed to be cost-effective at the portfolio level, while meeting existing statutory energy efficiency goals, in support of state policies and objectives, and without placing undue burdens on ratepayers.

37. The Commission notes that the fundamental purpose of the EmPOWER Maryland program has been to help both residential and commercial customers achieve energy savings in their respective buildings. Furthermore, no evidence has been presented regarding FTM utility resources, the associated potential energy savings or GHG reductions, costs and funding sources, or customer bill impacts. It would be premature for

the Commission to designate BTM and FTM percentage limitations at this time in the absence of such information. Instead, the Commission requires the utilities to develop their plans with a minimum of 80 percent of the goal savings derived from BTM measures and FTM community resources. This is in alignment with the previous program cycle's contribution from FTM resources.[71] The utilities may request a greater percentage of FTM measures, subject to Commission review and approval prior to implementation.

38. The utilities are to file their three scenarios, in accordance with the above-noted parameters, by August 1, 2023. The Commission recognizes that this deadline is earlier than the usual September 1 date by which to file new cycle plans, but finds that September 1 would likely not allow sufficient time for review, stakeholder comments, and any necessary programmatic changes before the start of the 2024-2026 program cycle.

39. The Commission encourages stakeholders to file comments on each of the utilities' filed scenarios, indicating what plans and goals they are advocating for and providing specific details in support thereof. Stakeholder comments are to be filed with the Commission by October 15, 2023.

40. The Commission expects the three plans and the stakeholder comments to provide sufficiently rigorous information and analysis to set GHG reduction goals for the upcoming 2024-2026 program cycle. In order to protect program continuity, and the important work that the EmPOWER program does for Maryland ratepayers, the Commission intends to provide implementable GHG reduction goals before the end of 2023. The Commission's expectation is that these goals will complement and reinforce the benefits of the existing

[71] Mr. Mosier: "One of the reasons we picked the 20 percent is that's pretty close to the ballpark of what we've done in the past." Tr. 69:14-16.

statutory energy efficiency goals. Finally, under the existing statutory mandates, the Commission intends to ensure that the programs continue to provide both direct benefits to program participants and overall cost reductions in our energy systems.

41. The Commission denies the request by the Exelon Utilities to modify item (i) of the Commission-approved goal structure to allow non-EmPOWER-funded BTM and FTM community programs to count towards GHG abatement goals. In addition to attempting to unilaterally change a goal structure that was reached by Work Group consensus, the Exelon Utilities are also attempting to re-argue its recent proposal to allow EmPOWER costs to be recovered through base rates which, incidentally, is the subject of the Exelon Utilities' pending Request for Rehearing.[72]

42. The Exelon Utilities argue that flexibility is needed in cost recovery mechanisms, particularly for electrification efforts intended to help achieve GHG abatement goals. The Exelon Utilities contend that, by allowing electrification costs to be recovered through base rates rather than the EmPOWER surcharge, the cost impact to customers would be minimized.

43. Rate and bill impacts must be part of any goal-setting process, as the Commission is tasked with managing ratepayer impacts and mitigating adverse cost effects on ratepayers.[73] It follows that flexibility can and will be exercised by the Commission as

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[72] The Exelon Utilities argue, as they did in Maillog No. 242856 (October 28, 2022) and Maillog No. 301085 (January 30, 2023), that "funding electrification efforts through the EmPOWER surcharge, as the only form of cost recovery, would likely cause the surcharge to increase too suddenly and too severely for our customers." Exelon Utilities Comments at 8. The Commission addressed the issue of cost recovery through base rates on page 20 in Order No. 90456 wherein it explained, in detail, its denial of the Exelon Utilities' request to recover the unamortized balance of EmPOWER costs through base rates. The Commission's decision on the Exelon Utilities' Request for Rehearing, which was opposed by OPC in Maillog No. 301382, is forthcoming.

[73] PUA § 7-211(c)(2).

needed, but that present circumstances do not warrant a deviation from current cost recovery methods. The record in this proceeding does not provide a basis to stray from the common practice of addressing recovery for non-EmPOWER programs through base rates in the context of rate cases.[74] As previously stated, the Exelon Utilities' request is denied.

44. In Order No. 90456, the Commission stated that, "in preparation for the next EmPOWER program cycle, the Commission will consider alternative approaches for compensating utility program administrators, including the use of performance incentive mechanisms."[75] The Commission therefore expects EmPOWER program administrators to propose performance-based cost recovery approaches in addition to traditional recovery approaches. Additionally, the Commission invites and encourages other stakeholders to also propose performance-based approaches to providing program administrators cost recovery and incentive mechanisms.[76]

II. LIMITED-INCOME GOAL-SETTING

A. Background

45. In Order No. 90261, the Commission noted that "establishing a GHG abatement goal for DHCD, complementary to that imposed upon the Joint Utilities for the next program cycle, would be beneficial in addressing customers that have so far been underserved by the EmPOWER program."[77] The Commission further stated that, in

[74] The Commission reiterates that, regardless of the context in which they are proposed, all programs associated with EmPOWER Maryland are subject to EmPOWER's rigorous evaluation, measurement, and verification ("EM&V") process.

[75] Maillog No. 300652, Order No. 90456 at 21 (December 29, 2022). PUA § 7-211(f)(2) grants the Commission authority to provide a variety of cost recovery methods.

[76] The Commission deems the EmPOWER Maryland Program an appropriate exception to its prior ruling in Order No. 89638, para. 25. Maillog No. 231970: Case No. 9618, *In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for an Electric Company or Gas Company* (September 29, 2020).

[77] Order No. 90261 at 29.

recognition of the efforts made by DHCD to meet its own targets and increase participation in its programs, no other goal would be imposed upon DHCD at that time.[78]

46. Also in Order No. 90261, the Future Programming Work Group was directed to include the matter of a DHCD GHG abatement goal in its considerations, and the utilities were directed to increase collaboration and coordination with DHCD to maximize limited-income customers' participation in the collective EmPOWER programs.[79]

47. The Commission directed that an Energy Affordability Study be performed by an independent party to "examine the geographical distribution of limited-income customers and the services received versus surcharges paid by limited-income customers in each of the Joint Utilities' service territories," with the intention of DHCD utilizing the Study's findings to reach more participants.[80]

B. Energy Affordability Study

48. On December 15, 2022, DHCD filed the final report from the APPRISE Energy Affordability Study.[81] The Study produced a comprehensive analysis of energy affordability, costs, and burden in Maryland, including the following data points:

> - Overall, 27 percent of electric utility customers are defined as limited-income,[82] yet only four to seven percent of these customers were served by EmPOWER's limited-income programs between 2013 and 2020.[83]
>
> - Electric heating limited-income customers have an average energy burden of 24 percent prior to receiving energy assistance. While comparable data was not available

[78] *Id*.
[79] *Id*.
[80] *Id*. at 30-31.
[81] Maillog No. 300518.
[82] Limited-income is defined as income at or below 250 percent of the Federal Poverty Level ("FPL"). Energy Affordability Study at 4.
[83] *Id*. at 5 and 8.

> for gas heating customers, the Energy Affordability Study estimated that gas heating limited-income customers have an average energy burden of 35 percent prior to receiving energy assistance.[84]
>
> - The mean energy assistance benefits reduce the mean energy burden to about 10 percent for electric heating limited-income customers, and 20 percent for gas heating limited-income customers.[85]

49. The Energy Affordability Study also provided several recommendations to further assist limited-income households with energy affordability and assistance, improve outreach in order to increase participation in the limited-income programs, and mitigate potential EmPOWER surcharge increases.[86]

C. Utility and Stakeholder Positions

50. As directed, the Future Programming Work Group included a DHCD GHG abatement goal in its discussions. The Phase II Report revealed that the Work Group agreed action must be taken to address existing equity issues that disproportionately impact limited-income households, but that no concrete proposals were put forth.[87]

51. MEEA and OPC supported a minimum GHG abatement goal equivalent to the goal adopted by the Low-Income Savings Act in 2022,[88] which would require DHCD to achieve an electric savings goal of one percent of the 2016 weather-normalized gross limited-income residential retail sales of all electric utilities annually.[89] The Phase II Report noted

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[84] *Id*. at 20.
[85] *Id*. The Energy Affordability Study references an "affordable energy burden" target of six percent of household income. *Id*. at ii.
[86] *Id*. at 13, 16, and 21.
[87] Phase II Report at 13.
[88] Senate Bill 526/House Bill 108 ("SB524/HB108") was passed by the General Assembly but ultimately vetoed by Governor Larry Hogan on May 27, 2022.
[89] Phase II Report at 13.

that the Work Group agreed with the concept of setting a goal, and generally supported the one percent GHG abatement goal."[90]

52. Concerns regarding the proposed goal included whether the one percent goal was realistic based upon DHCD's historical achievement, to which the parties acknowledged the need for a ramp up over a period of years to reach the one percent.[91] DHCD also noted that the Low-Income Savings Act goal included savings from all of DHCD's energy programs, not just those from EmPOWER, and also allowed savings from other State agency programs to count, therefore any Commission-created goal would need to specify what savings could be counted towards any goal imposed upon DHCD.[92]

53. Additional proposals were discussed within the Future Programming Work Group, including the establishment of a percentage of income payment program ("PIPP") and the development of a limited-income-specific rate structure, but none garnered significant discussion or support.[93]

54. Legislation similar to the Low-Income Savings Act was introduced in the 2023 General Assembly shortly after the Future Programming Work Group filed its Phase II Report.[94] SB144/HB169 would require DHCD to achieve .53 percent annual gross energy savings in 2024, .72 percent in 2025, and one percent in 2026, with the energy savings permitted to come from any DHCD program, not solely EmPOWER.[95] Several stakeholders proposed that the Commission incorporate aligned goals for DHCD programs,

[90] *Id*. at 3 and 13.
[91] *Id*. at 15-16.
[92] *Id*. at 16.
[93] *Id*. at 17-18.
[94] Senate Bill 144/House Bill 169 ("SB144/HB169") was introduced to the General Assembly on January 16, 2023.
[95] https://mgaleg.maryland.gov/mgawebsite/Legislation/Details/hb0169?ys=2023RS.

thereby addressing the need for more equitable benefits for limited-income customers while also alleviating the need for major adjustments from DHCD, should SB144/HB169 be adopted.[96] Staff, DHCD, and the utilities took no position regarding the establishment of a limited-income savings goal.

D. Commission Decision

55. The Commission continues to find that implementing a DHCD savings goal would help to achieve more equitable EmPOWER benefits to limited-income customers; however, given the pending status of SB144/HB169, the Commission will not formally establish a DHCD goal at this time. Instead, DHCD is requested to develop its plan for the 2024-2026 program cycle to meet the savings targets designated in SB144/HB169. In addition to avoiding the potential for any conflict between the pending legislation and a Commission-requested goal, this will require DHCD to design the more robust plan needed to increase savings and participation, and will not require major readjustments by DHCD, should SB144/HB169 become law. This will also provide DHCD with the clarity needed to start its program planning process, including determining potential costs, budgetary needs, and potential additional funding sources.

56. If the pending legislation is enacted, the Limited-Income Work Group is directed to file with the Commission a recommendation as to what percentage of the goal imposed upon DHCD must come from its EmPOWER Maryland limited-income programs. The

[96] Montgomery County Goal Comments at 9; MEEA Phase II Report Comments at 6; OPC Comments on Goal-Setting at 3. MEA did not specifically support the implementation of the pending legislation goal but did note its support for "DHCD goals that are attainable and provide increased reach for DHCD programs." MEA Goal Comments at 6.

Work Group is directed to file its recommendation within 30 days of the enactment of the subject legislation.

57. If the pending legislation does not pass this session, the Commission still requests DHCD develop its plans to achieve the goals required in SB144/HB169. The DHCD plan and associated comments are to be sufficiently rigorous to evaluate the benefits of pursuing such a goal, and to set both GHG reduction and energy efficiency goals for the limited-income population. In order to protect program continuity, and the important work that DHCD's limited-income program does for Maryland ratepayers, the Commission intends to provide implementable GHG reduction and energy efficiency goals for the program before the end of 2023.

58. As with the utilities, DHCD's proposed plan must contain thorough cost-benefit and bill impact analyses. Should the proposed plan involve the use of outside funds, DHCD must designate the source, amount, and purpose of the funds. DHCD's proposed plan must be modular and categorize measures by energy efficiency, demand response, and electrification, and it must differentiate between gas and non-gas appliance rebates.

59. The Commission encourages stakeholders to file comments on DHCD's proposed plan with the Commission by October 15, 2023.

60. The Commission expects that DHCD's continually improving outreach methods will drive its participation numbers upward. DHCD testified that it was already engaging in the outreach recommendations made in the Energy Affordability Report prior to the Report, including utilizing multiple intake sources and increasing partnerships with other state agencies.[97]

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[97] Tr. 41:4-16.

61. DHCD also testified as to its computer system and computer-based outreach, stating that its new database and system will be available by the end of this year and will include online application capabilities, automated customer follow-up messaging, and the ability for customers to view the status of their project(s).[98] DHCD is directed to include in its 2023 Q3/Q4 semi-annual filing an update regarding the status of the database and software system.

62. Still, a greater overall emphasis needs to be placed on limited-income programs. The Commission has long held this position, and the results of the Energy Affordability Study further confirm it to be true. Participation in DHCD's EmPOWER programs must increase.[99] Expanded funding for DHCD's EmPOWER programs must be secured.[100] An analysis should be performed as to the root cause(s) behind the high energy burden on limited-income customers.[101] An income-eligible rate structure and/or PIP program should be explored, as should a Net Zero Home Pilot Program.[102]

63. In order to allow the utilities and DHCD to focus on the development of their respective plans for the new program cycle, these issues will be revisited once the 2024-2026 cycle commences. It is important to remember, however, that the EmPOWER

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[98] Tr. 41:18-42:17.

[99] *See*, *e.g.*, Staff Comments on the Energy Affordability Study at 1; MEEA Comments on the Energy Affordability Study at 2.

[100] *See*, *e.g.*, MEEA Comments on the Energy Affordability Study at 3.

[101] *See*, *e.g.*, Staff Comments on the Energy Affordability Study at 1; OPC Comments on the APPRISE Energy Affordability Study at 5. The Energy Affordability Study recommended that a further assessment be performed of the source of energy affordability issues: "high energy usage, low household income, or both." Energy Affordability Study at ii. Montgomery County agreed that a deeper understanding of the role of energy usage in the energy affordability experience of limited-income households would likely be valuable for developing EmPOWER goals and strategies. Montgomery County Comments on the Energy Affordability Study at 4.

[102] *See*, *e.g.*, MEEA Comments on the Energy Affordability Study at 3. Montgomery County Comments on the Energy Affordability Study at 4; OPC Comments on the APPRISE Energy Affordability Study at 7.

Maryland Program alone cannot solve the affordability problem faced by limited-income customers.

III. EmPOWER REPORTING and PROCESS IMPROVEMENT WORK GROUP STATUS REPORT

64. In Order No. 90261, the Commission directed the ERPI Work Group to file a status report by October 17, 2022, on potential changes to the EmPOWER program development process to ensure transparency and greater opportunities for stakeholder and third-party participation.[103]

65. In its status report, the ERPI Work Group noted a consensus on the need to increase stakeholder transparency in all phases of the program plan development process. However, the report also described disagreements as to the scope and timing of the process.[104] In Order No. 90433, the Commission directed the ERPI Work Group to continue to work together to establish the appropriate time frame for the program planning process, and to file a status report by April 17, 2023.[105] By Order No. 90470, the Commission modified Order No. 90433, in relevant part, to direct the Work Group to file its status report by February 17, 2023.[106]

66. The status report contained a proposed timeline put forth by the Joint Utilities and a counterproposal from OPC.[107] The first two steps in both timelines were the same and were to take place in February and March 2023. Staff noted in the status report that it

[103] Order No. 90261 at 11-12.
[104] Maillog No. 242683 at 3-4.
[105] Maillog No. 300377, Order No. 90433 at 20-21 (December 2, 2022).
[106] Maillog No. 300819, Order No. 90470 at 1 (January 11, 2023).
[107] ERPI Work Group Status Report at 3 and Attachment A at 3-4.

would work with the utilities and other stakeholders to implement the first two steps in order to begin the plan development process.

67. Staff supported the timeline proposed by OPC but noted that it did not address the most contentious issues among the Work Group, including the level of engagement available to certain stakeholders, the expectations regarding utility response to stakeholder proposals, and the number of stakeholder meetings to be held for certain Work Groups.[108]

68. The Commission notes that both proposed timelines were drafted based on the previous deadline of September 1 for the utilities and DHCD to file their three-year plans. As the Commission is requiring earlier filings and providing a longer response time by parties, this should help alleviate any concern from parties regarding inability to provide appropriate feedback into utility plans. Staff is directed to continue its efforts to work with the utilities and other stakeholders to implement the first steps of the plan development process. Then, to ensure there is still a feedback loop, there shall be one EmPOWER Utility Planning and Stakeholder Collaboration Meeting conducted before June 1. The utilities are required to include as part of their August 1 filings, acknowledgement of acceptance of suggestions provided in said meeting or a written response as to why the utility did not incorporate the feedback provided at the meeting.

IT IS THEREFORE, this 20th day of March, in the year Two Thousand Twenty-Three, by the Public Service Commission of Maryland, **ORDERED**:

(A) that any request for adjustment to the assumptions used by the utilities and DHCD when developing their 2024-2026 plans must be filed by the EM&V Work Group with the Commission by May 1, 2023;

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[108] *Id*. at 4.

(B) that the utilities are to file their three scenarios, in accordance with the parameters noted in this Order, by August 1, 2023;

(C) that DHCD is to file its proposed 2024-2026 program plan, in accordance with the parameters noted in this Order, by August 1, 2023;

(D) that stakeholder comments on the scenarios filed by the utilities and DHCD are to be filed with the Commission by October 15, 2023;

(E) that the request by the Exelon Utilities to modify item (i) of the Commission-approved goal structure to include programs not funded by EmPOWER is denied;

(F) that the Limited-Income Work Group is directed to file its recommendation as to what percentage of the SB144/HB169 goal imposed upon DHCD should be attributed to EmPOWER within 30 days of the enactment of the pending legislation;

(G) that DHCD is directed to include in its 2023 Q3/Q4 semi-annual filing, an update regarding the status of its new customer database and software system;

(H) that the utilities are directed to include in their August 1 filings, information regarding feedback received at the EmPOWER Utility Planning and Stakeholder Collaboration Meeting as stated herein; and

(I) that all other requests are denied without prejudice.

/s/ Jason M. Stanek

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Patrice M. Bubar
Commissioners