

**ORDER NO. 89636**

Impacts of COVID-19 Pandemic on  
Maryland Gas and Electric Utility  
Operations and Customer Experiences

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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PC53  
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**Issue Date: September 22, 2020**

**ORDER ON COVID-19 EMERGENCY MEASURES**

1. In Public Conference 53 (“PC53”), the Commission requested information and comment on the impact of the COVID-19 pandemic on ratepayers, utilities, and other interested persons. The Commission received written filings from 13 utilities, state agencies, and interest groups. On August 27, 28, and 31, 2020, the Commission held public hearings to discuss the data and recommendations received. Based on that record and the pending expiration of Maryland Governor Larry Hogan’s Executive Order prohibiting residential utility service terminations, on August 31, 2020, the Commission issued an emergency order from the bench (“August 31 Order”).<sup>1</sup>

2. The August 31 Order did not address all the proposals made by utilities and other stakeholders, and, as noted by the Commission, further action would be taken by written

<sup>1</sup> Bench Order, issued August 31, 2020 by unanimous vote of 4-0 with Commissioner Richard abstaining for the reasons stated on the record.

order.<sup>2</sup> Additionally, on September 2, 2020, the Maryland Office of People’s Counsel (“OPC”) filed a Motion for Clarification (“Motion”) of the Commission’s August 31

3. Order. This order will address issues raised in both the initial filings and hearing, and in OPC’s Motion.<sup>3</sup> Unless stated otherwise, determinations made in the body of this order shall remain in effect until further direction of the Commission.

### **Background**

4. Since March 5, 2020, Maryland has operated under a state of emergency in an effort to control and prevent the spread of COVID-19. On March 16, Governor Hogan issued an Executive Order that prohibited Maryland utilities<sup>4</sup> from terminating residential service for Maryland customers and charging late fees (the “Governor’s moratorium”).

5. On July 8, 2020, the Commission initiated Public Conference 53 to assess the impacts of COVID-19 on Maryland utilities and ratepayers, including accumulated arrearages, service terminations, and other financial and administrative challenges, and to explore potential regulatory actions to mitigate those impacts. The Commission received written filings from utilities, the Commission Technical Staff (“Staff”), OPC, and other interested persons. On August 27 and 28, the Commission held public hearings on the accumulation of large ratepayer arrearages as a result of COVID-19, as well as other issues.

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<sup>2</sup> This Order will not address certain items discussed during the hearings, but which are not yet ripe for discussion. This includes any issues related to the review of costs incurred, including unrecoverable arrearages.

<sup>3</sup> Unless stated otherwise, this Order applies only to customer accounts serving dwelling units or residences. Although Staff has suggested that the Commission establish additional protections for small commercial customers, the record in this proceeding does not yet adequately address the need, possible implementation, and impact of such relief. Nonetheless, the Commission encourages utilities to work with small business owners requesting additional time or other leeway to pay arrearages accumulated during the current pandemic.

<sup>4</sup> Including some utilities outside of the Commission’s jurisdiction.

6. On August 31, 2020, in anticipation of the September 1, 2020 expiration of the Governor's moratorium prohibiting utility disconnections for non-payment, the Commission took emergency action from the bench to approve a package of five motions to effectuate an orderly transition (*i.e.*, the August 31 Order):

(1) Utilities may not engage in service terminations and or charge late fees until October 1, 2020 and any notices of termination for residential accounts sent before October 1, 2020 are invalid;

(2) a Public Service Company must give notice at least 45 days before terminating service on a residential account;<sup>5</sup>

(3) structured payment plans offered by Public Service Companies to residential customers in arrears or unable to pay must allow a minimum of 12 months to repay, with that period extending to 24 months for customers certified by the Maryland Office of Home Energy Programs ("OHEP") as low income;

(4) prohibited any Public Service Company from collecting or requiring down payments or deposits as a condition of beginning a payment plan by any residential customer; and

(5) prohibited any Public Service Company from refusing to negotiate or denying a payment plan to a residential customer receiving service because the customer failed to meet the terms and conditions of an alternate payment plan during the past 18 months.

7. On September 4, 2020, the Commission issued a second notice in PC53 requesting filings by Maryland's investor-owned utilities proposing arrearage forgiveness and/or arrearage management programs. The notice also requested comments from interested parties and established hearing dates to consider proposals.

8. In light of the August 31 Order, and while the Commission awaits the arrearage program filings, the Commission has determined that several additional issues can be addressed at this time.

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<sup>5</sup> Except where Commission regulations do not require notice of termination.

## Commission Decisions

### 1. Expedited or alternative rate proceedings

9. Multiple utilities raised the possibility of an expedited rate proceeding or other limited proceeding, leading to a temporary rate base increase or customer surcharge, to allow utilities to begin to collect on their additional expenses imposed by the COVID-19 pandemic.<sup>6</sup> The Commission recognizes that the pandemic has created financial stress for some Maryland utilities. The Public Utilities Article (“PUA”) provides several alternatives to traditional rate cases, including temporary rates and “make whole” proceedings, as well as the Commission’s authority to establish riders for specific purposes.<sup>7</sup> Utilities under financial stress may seek relief under those existing frameworks and should also communicate any concerns about their financial health to the Commission as soon as possible. The Commission will consider applications on a case-by-case basis, giving due consideration to the specific situation of each utility.

### 2. Utility reporting requirements

10. Several parties raised the possibility of additional reporting requirements for utilities, including regulatory asset status, arrearages, and service terminations.<sup>8</sup> The Commission agrees that management of the ongoing crisis requires up-to-date reporting about how ratepayers and utilities are being affected.

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<sup>6</sup> SMECO Response at 7; Maryland American Water Company Response at 11; Chesapeake Utilities Corporation Response at 5. On April 9, 2020, the Commission issued an order authorizing Utilities to establish a regulatory asset for incremental COVID-19 expenses and income offsets. Order No. 89542.

<sup>7</sup> Md. Code Ann., Pub. Util. Art. § 4-201, *et seq.*

<sup>8</sup> OPC Comments at 42-46; Maryland Energy Efficiency Advocates Comments at 13-15; Chesapeake Utilities Corporation Response at 5; Staff Comments at 34.

11. Beginning November 1, 2020, each utility that is using a COVID-19 regulatory asset is therefore directed to file quarterly reports with the Commission on the status of those expenses it has placed and income offsets into that regulatory asset.

12. Beginning November 1, 2020, each utility is also directed to file monthly reports with the Commission setting forth:

- a) the number of accounts in arrears for up to 30 days, 30 to 60 days, and more than 60 days;
- b) the total dollars of arrearages including other charges;<sup>9</sup>
- c) the number of customers who have been sent a notice of termination;
- d) the number of customers who have entered into a payment plan;
- e) the number of customers who have requested a payment plan but either did not receive one or did not accept the terms offered;
- f) the number of customers who have defaulted on a payment plan that began after the August 31 Order;
- g) the number of customers who have applied for energy assistance;
- h) the number of customers who have had service reconnected; and
- i) the number of terminations the utility has effectuated.

This data should be reported by customer class and geographic location at the county level or nearest approximation. Utilities should advise the Commission if this directive is unduly expensive or outside a utility's capabilities. This obligation is in addition to and does not substitute for any existing reporting obligations.

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<sup>9</sup> Such as deposits, late fees, and AMI opt-out fees.

### **3. Waiver of COMAR 20.31.05.08C(3)**

13. Potomac Edison requested that the Commission issue a waiver of COMAR 20.31.05.08C(3), which prohibits customers from using energy assistance funds through the Commission's Utility Service Protection Program to pay off arrearage balances if they have already done so.<sup>10</sup> The Commission has historically granted such waivers, and doing so in this case is justified by the need to avoid imposing unnecessary hardship during a time of crisis.<sup>11</sup> The request is therefore granted with statewide effect.

### **4. Waiver of COMAR 20.31.03.03A**

14. The City of Hagerstown Light Department ("Hagerstown") requested that the Commission relax the COMAR 20.31.03.03A winter affidavit requirement dates. The Commission understands that Hagerstown operates a small utility and alleges difficulty complying with the affidavit requirements and that the Governor's moratorium began before the end of last winter's affidavit period, meaning that more than a year will pass during which Hagerstown will effectively have been unable to issue termination notices.<sup>12</sup> The Commission is concerned to discover any utility is unable to comply with a regulation intended to provide procedural safeguards but not serve as a total moratorium. In such circumstances, the Commission encourages utilities to contact Staff to develop an individualized solution for Commission review. Accordingly, the Commission declines Hagerstown's request for a waiver of the winter affidavit regulations at this time.

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<sup>10</sup> Potomac Edison Response at 19.

<sup>11</sup> The Commission last waived this provision at its November 6, 2019 administrative meeting, based on a joint motion by several utilities and a recommendation in support by Staff. *See* Maillog No.'s 226994 and 226994.

<sup>12</sup> City of Hagerstown Light Department Response at 3.

## **5. Exemption of Easton Utilities from PC53**

15. Easton Utilities has requested an exemption from participating in PC53 as a gas utility.<sup>13</sup> The Commission did exempt Easton's electric operations in its initial notice, and the request that the exemption be extended to gas operations is granted.

## **6. Expansion of the Low Income Energy Efficiency Program**

16. Maryland Energy Efficiency Advocates ("MEEA") requested Commission authorization for utilities to increase low income energy efficiency spending under the Maryland Department of Housing and Community Development's ("DHCD") EmPOWER program.<sup>14</sup> At this time, the Commission does not have sufficient detail on the benefits or costs of expanding the existing program. Further, the current EmPOWER program cycle and plan expires December 31, 2020. Any discussion or decision on the scope of the DHCD low income program is best considered in Case No. 9648, which is the docket containing plans and proposals for the upcoming three-year EmPOWER program cycle (2021-2023).

## **7. Minimum repayment amounts**

17. Several parties discussed the possibility of requiring utility repayment plans to allow a minimum payment of as little as 10 dollars as a way to ensure manageable payment plans that would keep customers' service connected.<sup>15</sup> In addition to minimum payments, parties also suggested that the Commission develop an arrearage management program and described the benefits of such programs that are currently offered in other

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<sup>13</sup> Easton Utilities Response at 5.

<sup>14</sup> Maryland Energy Efficiency Advocates Comments at 15-20.

<sup>15</sup> BGE Response at 12-13; Tr. at 280 (Fields) and 326-27 (Case).

states and jurisdictions.<sup>16</sup> The Commission agrees that policies that keep customers both paying down their arrearages and in service are generally in the public interest. While the Commission will not impose a universal minimum payment amount, the Commission does expect utilities to continue to work with customers in arrears to negotiate reasonable payment plans.

### **8. Customer financial records**

18. MEEA requested that the Commission prohibit utilities from requiring that customers provide financial records to access extended repayment plans.<sup>17</sup> The Commission's August 31 Order requires utilities to offer 12-month repayment plans regardless of income. These plans should be offered without the need to present financial records. Customers applying for energy assistance or other grant programs may still need to provide financial records, however.

### **9. OHEP computer access and eligibility**

19. Rebuild Overcome And Rise (R.O.A.R.) and the University of Maryland have asked the Commission to review the eligibility rules for OHEP energy assistance programs in order to help customers with limited computer and online access.<sup>18</sup> While the Commission does have oversight over the ratepayer-funded portion of energy assistance programs, the Commission does not have jurisdiction over OHEP eligibility criteria which are largely driven by the requirements imposed by other energy assistance funding and programs managed exclusively by OHEP. Further, the Commission has no jurisdiction over OHEP's application processes or the local decisions to open aid offices

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<sup>16</sup> MEEA Comments at 17-19, Tr. at 359-66 (Grevatt); see also Tr. at 287-88 (Fields).

<sup>17</sup> MEEA Comments at 11.

<sup>18</sup> R.O.A.R. Comments at 3.

for in-person and paper applications. As such, the Commission has no authority to grant R.O.A.R.'s requests.

### **10. OPC's Motion for Clarification**

20. In its Motion for Clarification, OPC raises several concerns about the application of the August 31 Order, which will be addressed below.<sup>19</sup>

#### **a. Duration of revised credit and collection terms**

21. OPC seeks clarification on the duration of the revised credit and collections terms. As the Commission stated, the August 31 Order will remain in effect until further order by the Commission.<sup>20</sup> The Commission will continue to monitor the status of both ratepayers and utilities and will lift or modify any emergency measures as the circumstances dictate. Thus, the Commission declines OPC's suggestion to create a date certain for expiration of those measures.

#### **b. Customer outreach**

22. OPC seeks clarification on a utility's obligation to inform customers about the emergency customer protection rules in effect during this emergency.<sup>21</sup> The Commission understands that several utilities have already begun outreach efforts to inform customers of what they can expect going forward. The Commission declines to establish tight editorial control over those efforts; however, the Commission directs utilities to inform customers of the range of payment options available to them, to minimize service terminations, and to help as many customers as possible to address their arrearages.

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<sup>19</sup> OPC Motion for Clarification.

<sup>20</sup> OPC Motion at 3.

<sup>21</sup> OPC Motion at 4-5.

Utilities are encouraged to work with the state and local government agencies and non-profits in communicating a consistent and clear message to customers.

**c. Customers previously disconnected for non-payment**

23. OPC asks what protection the Commission is going to provide for customers who were previously disconnected for non-payment prior to the Governor's moratorium, and whether those customers will be allowed to re-establish service without a deposit or fee if they agree to enter a payment plan or are approved for energy assistance.<sup>22</sup> At this time, the Commission is not convinced that special rules for customers whose service was terminated prior to the initiation of the Governor's moratorium over six months ago are necessary. Reconnection fees for Utility Service Protection Program ("USPP") customers are already prohibited under COMAR 20.31.05.08D, and the Commission's August 31 Order prohibiting the collection of down payments as a condition of beginning a repayment plan should be understood as a temporary waiver of COMAR 20.31.05.04B and 20.31.05.08A(3), which ordinarily permit a utility to refuse to reconnect a USPP customer until that customer has paid down their arrearage balance to below a certain threshold. The Commission understands that utilities will also continue to work with those customers not eligible for USPP, and in some cases may choose to waive reconnection fees.<sup>23</sup> The Commission's August 31 Order on repayment terms will also apply to those customers when their service resumes.

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<sup>22</sup> OPC Motion at 5-6.

<sup>23</sup> Tr. at 61 (Dickens); Tr. at 122 (Tr. at 126 (Murdock); Tr. at 201 (Fridinger); Tr. at 325-326 (Case)

**d. Late fees during extended repayment plans**

24. OPC asks whether late fees will be waived during the period of the extended payment plans.<sup>24</sup> When the Commission's moratorium expires on October 1, 2020, utilities may resume charging late fees in the manner permitted by law, Commission regulation, and their filed tariffs.

**e. Continuing application of 55-day extension before termination for customers with pending OHEP applications for customers of certain utilities**

25. OPC asks whether the 55-day extension before termination for customers with pending OHEP applications<sup>25</sup> remains in effect for customers of certain utilities. Order No. 80307 is still in effect and should continue to provide a window for OHEP to make determinations on those applications. To the extent that the parties to the settlement, or other interested parties, believe that a temporary modification is necessary to accommodate potential increased application processing time during the current crisis, they should work together to develop a proposal for Commission consideration.

**f. Repayment terms for customers with pending OHEP applications**

26. OPC asks whether a customer in arrears with a pending OHEP application would be offered a 12- or 24-month repayment plan. In addition, OPC requested clarification on how utilities should treat customers who enter into 12-month payment plans before approval of an OHEP application.<sup>26</sup> If a timely determination on an OHEP application has not yet been made, the utility may, in its discretion, offer either the 12- or 24-month

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<sup>24</sup> OPC Motion at 6-7.

<sup>25</sup> This is required of certain utilities under a Settlement Agreement accepted in Commission Order No. 80307.

<sup>26</sup> OPC Motion at 7-8.

term. However, if a customer on a 12-month plan is ultimately approved through OHEP, the utility must offer a 24-month repayment term.

**g. Customers in default of repayment plan**

27. OPC asks what happens when a customer defaults on an alternate payment plan, and whether such a customer can obtain another plan or if they are then subject to termination.<sup>27</sup> At the hearing, the utilities argued that the possibility of service termination is a necessary tool to ensure that customers either apply for energy assistance or enter into a payment plan.<sup>28</sup> Based on the statements given at the hearings on August 28-29, the Commission understands that the utilities are committed to continuing to work with customers to ensure that service terminations occur only as a last resort.<sup>29</sup> Going forward, utilities should therefore provide to a customer who defaults on an alternative payment plan at least one opportunity to enter into a new plan prior to service termination. Further, any customer who requests or enters into a new or renegotiated payment plan should be offered terms consistent with the August 31 Order.

**IT IS THEREFORE**, this 22<sup>nd</sup> day of September, in the year Two Thousand Twenty, by the Public Service Commission of Maryland,

**ORDERED:** (1) That unless stated otherwise, the determinations made in the body of this order shall remain in effect until further direction of the Commission; and

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<sup>27</sup> OPC Motion at 8-9.

<sup>28</sup> Tr. at 32-34 (Olivier); Tr. at 70-71 (Dickens); Tr. at 100 (Michel); Tr. at 162-163 (Tubbs); Tr. at 219 (Scher).

<sup>29</sup> Tr. at 30-31 (Olivier); Tr. at 72-73 (Dickens); Tr. at 113 (Trout); Tr. at 183 (MacDougall).

(2) That to the extent any Commission regulations, orders, or tariffs conflict with this order, they are suspended until further direction of the Commission.

*/s/ Jason M. Stanek*  
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*/s/ Anthony J. O'Donnell*  
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*/s/ Odogwu Obi Linton*  
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*/s/ Mindy L. Herman*  
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Commissioners

**STATEMENT OF COMMISSIONER MICHAEL T. RICHARD**  
**CONCURRING IN PART AND DISSENTING IN PART**

1. Although I join my fellow Commissioners today in taking action to mitigate an historic crisis that encumbers consumers' ability to fully and timely pay for utility services, as well their ability to meet other pressing financial needs including housing, I write separately to express my concern that this Commission could and should do more.

2. At the final Public Conference 53 hearing on August 31, 2020, the Commissioners voted on emergency orders to extend consumer protections beyond the September 1, 2020 expiration of the Governor's Executive Order prohibiting utility terminations. Five motions were presented. Although I requested on the record that we vote on each motion individually, the Commission considered them as a package subject to a single up-or-down vote. I supported the emergency customer protections contained in four of the five motions, which will help customers manage their bills and prevent service terminations for unpaid bills. However, I abstained from voting because I disagreed with the first item,<sup>1</sup> which would end protections against collections, service terminations, and late fees as of October 1, 2020.

3. Instead, I support the alternative plan proposed by the Office of People's Counsel ("OPC") and supported by the Attorney General, more than 60 legislators, and consumer advocates who assist low-income residents. That plan would have extended protections against disconnections for at least the duration of the State of Emergency. I therefore would have extended those protections until either the lifting of the State of Emergency

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<sup>1</sup> That item is referenced in this Order at paragraph 5(1).

or some other indicator that Marylanders are no longer in financial distress due to the COVID-19 pandemic. I agree the Commission must balance utility and customer interests, as well as State policy goals. However, lifting the moratorium on utility service disconnections too quickly puts the thumb on the scale in favor of the State's largest utilities.<sup>2</sup>

4. During the PC53 hearings, the Commission did not hear evidence of negative effects on electric or gas safety, reliability or financial health. Only one municipal utility has provided evidence of financial difficulties due to unpaid bills.<sup>3</sup> Based on that record, I disagree with the position (and the implied characterization) taken by some utilities, and referenced by this Order, that the possibility that some Marylanders are taking advantage of the pandemic and deliberately evading bill payment justifies resuming terminations and late fees for all Marylanders.<sup>4</sup>

5. We also did not hear any evidence that Marylanders' financial struggles related to COVID have decreased, or that economic conditions allow us to go back to business as usual. In fact, I heard testimony that everyday difficulties will likely be compounded by the start of the school year. Virtual schooling will require electricity! Maryland families from all walks of life are facing difficult choices, while many community-based resources remain closed or short-staffed due to the pandemic. I conclude, based on the

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<sup>2</sup> My statement refers primarily to the Exelon and FirstEnergy electric utilities, which serve approximately 90 percent of the State's electric customers. The hearing record shows that these companies have maintained strong financial health throughout the ongoing pandemic. The governance structures of the State's cooperatives and municipalities make these entities accountable to the customers they serve, and not shareholders, and I believe they warrant greater latitude from the Commission than the investor owned utilities.

<sup>3</sup> See August 28, 2020 Transcript at 282.

<sup>4</sup> *Id.* at 319-323.

record before the Commission, that more time is necessary to develop and execute a sound transition plan informed by evidence.

6. What I did hear from some utilities were detailed plans to begin disconnections after sending out mass waves of termination notices. Before allowing electric and gas companies to begin threatening disconnections and stripping vulnerable residents of essential services, OPC's proposal would require the utilities to inform their customers and offer solutions to those who are unable to keep up with all of their bills. While I am heartened by the utilities' "promises" to not disconnect customers who are in contact with them and seeking assistance, I would require utilities to "forbear" on disconnections, memorializing these verbal commitments. I am disappointed that such language was not part of the August 31 Order or this Order. Although one Staff representative at the hearing described the Commission's regulations on repayment and termination as functioning like a "carrot and stick," if customers cannot pay, no stick will solve our current collective dilemma.<sup>5</sup>

7. For many of us who have remained fully employed during the pandemic (some by virtue of teleworking), these past several months have been merely an inconvenience. But for others the State-imposed restrictions have had a devastating impact on their lives and their ability to provide for their most essential needs – shelter, food, and energy. Although I am heartened that the Commission will continue to collect data on the impact of the pandemic on ratepayers, I believe that the OPC proposal to track that data at the zip code level (as opposed to county-wide) would provide materially better visibility into the disparate impact that the pandemic has had on specific groups, which in turn would allow

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<sup>5</sup> *Id.* at 308-309.

the Commission, and the other government agencies and non-profits with which we work, to make more targeted and effective resource allocation and other policy decisions during this unprecedented crisis.

8. Relatedly, I believe it is imperative to ensure that Maryland social service agencies are prepared for the expected spike in requests for assistance as restrictions are lifted. For many struggling customers, this will be the first time they have had to seek assistance or attempt to deal with their utility in order to avoid service disconnection. Time should be afforded to Marylanders to be able to work confidently with their utility, and not under the threat of termination of essential services.

9. While I am supportive of footnote 3 in this Order, I also support the Commission Staff's recommendation to extend the same residential protections provided in these orders to small businesses. The State of Emergency declaration continues to have a devastating impact on small business owners, many of whom have been required to close their doors and restrict operations. These businesses will be vital to the State's economic recovery overall and to the restoration of jobs. Therefore, I believe small business customers should be provided the protections afforded residential customers by the Commission's Emergency Order. I am disappointed that this Order does not accept Staff's recommendation.

10. I also strongly support arrearage management programs ("AMPs"), which other states have developed to provide arrearage forgiveness and other protections to customers who successfully participate in such programs. Several states already have AMPs in place, including Delaware, Illinois, and Washington, all states with Exelon companies. This Commission should ensure that Maryland catches up and offers similar programs

with an eye toward affordability. To this end, I therefore would urge our utilities to act with urgency on the Commission's September 4 Notice to provide robust proposals for implementing forgiveness programs in Maryland.

11. I believe that the actions this Commission is taking during the on-going COVID-19 pandemic will be among the most consequential ever for Maryland utility customers. It is crucial that, as the regulator, the Commission hold utilities responsible for successfully providing payment plans and referring customers to the assistance they need and are entitled to receive. For this reason, I support these important consumer protections contained in the August 31 Order and this Order. But I believe we should have timed the lifting of the moratorium with the end of the State of Emergency, and I would have ensured customer interests were truly in balance with the power of the state's large investor-owned utilities to terminate services.

*/s/ Michael T. Richard*

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Commissioner