

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

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In the Matter of Alternative Rate Plans or Methodologies to Establish New Base Rates for An Electric or Gas Company	*	Case No. 9618
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Application of Baltimore Gas and Electric for an Electric and Gas Multi-Year Plan	*	Case No. 9645
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**INITIAL COMMENTS OF THE
MARYLAND OFFICE OF PEOPLE’S COUNSEL**

After four years, five rate cases, billions of dollars in net plant additions, and double-digit rate increases, the results of Maryland’s experiment with multi-year rate plans (“MRPs”) are obvious: MRPs have failed Maryland customers.

Record-high distribution rates are the only tangible customer impact of MRPs. Customers have experienced an average annual rate increase of more than 6 percent. In 2024, the average BGE electric customer will pay \$145 more for distribution service than in 2020.¹ The annual distribution costs of BGE gas customers have increased by more than \$250.² Pepco and Delmarva’s customers have fared just as poorly. DPL customers have seen a \$97 annual bill increase for distribution service after the first two years of the

¹ Assuming 900 kWh per month.

² Based on the averages for BGE gas, BGE electric, DPL and Pepco. See Appendix A, Office of People’s Counsel, *Maryland’s Utility Rates and Charges* (Aug. 2024).

company's MRP. Pepco customers have seen their annual distribution bill increase by \$172 after approval of their first MRP.

These rate increases reflect accelerated capital investments as well as increased operations and maintenance ("O&M") spending. BGE's additions to gas and electric plant over its first MRP total more than \$2 billion—\$600 million of which was more than the Commission's authorized capital budgets. The company's O&M performance did not deliver the decrease in annual O&M expense the company budgeted for its first MRP; rather, the company overspent by more than \$100 million.

The rate increases are driven by the structural exclusion of cost containment mechanisms in MRPs. MRPs drastically lower the risk to utilities posed by cost-ineffective operations through the reduction of regulatory lag and the approval of proposed capital projects for revenue requirement purposes. The very design of the MRP—basing rates on utility-proposed budgets of a forecasted three-year plan— incentivizes utilities to "shoot for the moon" and pursue a greater number of capital investments than what would have been pursued under standard ratemaking, which is based on actual spending during a historic test year. The opportunity to reconcile both O&M and capital costs—and recover costs incurred above authorized budgets— substantially lowers utility risks associated with inaccurate forecasting, poor performance, mismanagement, or cost-ineffectiveness. These risks—including reduced profitability for cost-ineffectiveness and cost-disallowances for untimely and unnecessary investments—are instead shifted to customers.

Standard ratemaking allocates these risks to utilities because utilities—and only utilities—can mitigate those risks. But under MRPs, customers are forced to bear those risks. Consequently, customers pay more for a utility’s failure to contain O&M costs, and customers pay more over the near- and long-term for exorbitant capital investments.

Such risk-shifting and higher distribution rates might be justified if customers received direct benefits because of the MRP. Yet there is little indication of *any* customer benefits attributable to MRPs. MRPs have not driven improvements in utility reliability performance; utility innovation remains lacking; and MRPs have not moved the needle on Maryland’s climate policies. Rather, while operating under MRPs, utilities have pursued the same traditional utility investments they have always used to grow rate base—only on a much larger scale.

The utilities that have participated in Maryland’s MRP pilot bear the burden to show—with quantified, objective data—the public interest benefits that can be attributed to MRPs. To date, as these comments detail below, the only lesson learned from Maryland’s MRP Pilot is that MRPs benefit the private interest of utility shareholders at the expense of the public interest. It is time to end the pilot.

I. The MRP construct harms the public interest.

The purpose of public utility regulation is to ensure that utilities perform in the public interest. Rates are the means for affording utilities “just compensation” for that performance.³ The revenue requirement’s purpose is to assure utilities have a sufficient

³ U.S. Const. amend V.

opportunity to be compensated for meeting their performance obligations, including a “fair return” on the capital they invest. A “fair return” is one that considers the risks that a utility faces and aligns its opportunity for profit with the returns of competitive businesses that face similar risks and so compete for the same capital.⁴ While the Commission may issue orders or mandates to advance specific goals—i.e. improving utility performance or specific types of investments—those goals must be met through rates that are sufficient, but no more than sufficient, to provide “a reasonable return on the fair value of the public service company’s property used and useful in providing service to the public.”⁵

MRPs must be evaluated for consistency with the purposes of public utility regulation—to ensure that utilities perform in the public interest and earn a return that is “fair” to both investors and customers. Maryland’s experience shows that MRPs fail this test because they substantially reduce utility risks without providing corresponding reductions in customer costs or increases in customer benefits. Nor do MRPs improve utility performance with respect to public policy goals. Rather, they perversely incentivize utility performance that does not align with the public interest. Below we explain, first, how MRPs inappropriately reduce utility risk, and second, how that reduction fails to yield tangible customer benefits—but does produce ever-increasing rate burdens.

⁴ *Missouri ex. Rel. Southwestern Bell Tel. Co. v. Pub. Serv. Comm’n of Mo.*, 262 U.S. 276, 290 (1920) (Brandeis, J. concurring).

⁵ Md. Code Ann., Pub. Util. Art. § 4-101(3) (defining “just and reasonable rate” as a rate that will result in “a reasonable return on the fair value of the public service company’s property used and useful in providing service to the public”).

A. MRPs lead to excessive utility spending and shift the risk of that spending to customers.⁶

MRPs encourage excessive capital spending that increases utility profits and drives up customer rates. By creating a framework allowing for unlimited proposals for capital spending with regulatory review and approval of proposed investments *before* they are made, MRPs increase the level of capital spending and dramatically reduce the utility's risk of cost disallowances. Prior approval effectively creates a rebuttable presumption of a project's prudence. Further, MRPs remove the constraining effect that regulatory lag has on capital investments by enabling utilities to begin earning a return on the costs of investments contemporaneous to when the investments are made. And, with the opportunity to reconcile capital spending that exceeds forecasted spending, utilities are held harmless—and benefit—if adjustments to their capital workplans increase costs. Without any limits on how many projects a utility can propose or how much a utility may spend, MRPs encourage utilities to present bloated capital investment plans that exceed what is sufficient or necessary to serve customers safely and reliability.

Pepco's first MRP exemplifies this sort of investment bloat. In Case No. 9655, the Commission chose to remove \$223.9 million of Pepco's proposed capital spending from inclusion in MRP base rates. The following are illustrations of project budgets the Commission removed from Pepco's proposal:

- 69kV Feeder Rebuilds where the company's costs had increased “without a reasonable explanation” thereby raising “significant questions as to the

⁶ Unless otherwise noted, specific information in this section relating to Pepco and BGE's MRP 1 performance is derived from the annual information filings for MRP 1 Rate Years 1–3 submitted by each utility.

cost-effectiveness of this program and whether it should continue;⁷

- Certain substation projects for which the Commission “was not sufficiently confident in Pepco’s load forecasting, consideration of alternatives, and cost-benefit considerations to allow recovery of such substation construction costs during the MRP”;⁸ and
- IT and real estate investments due to concerns about the accuracy of the company’s forecasts.⁹

Yet, notwithstanding the Commission’s reductions, Pepco added \$675 million in electric plant to its rate base over the course of its MRP. Similarly, although the Commission reduced BGE’s proposed MRP 1 gas and electric rate bases by \$231.5 million and \$427.4 million respectively,¹⁰ BGE still added more than \$1.3 billion to electric plant and \$1.1 billion to gas plant over the duration of the MRP.

Maryland’s MRP construct also de-risks a utility’s ability to recover exceedances in both operations and maintenance (“O&M”) and capital costs. Under historic test year ratemaking, recovery for O&M expense is determined based on the costs incurred during the test year adjusted for known and measurable changes. Utilities cannot recover costs that exceed the fixed O&M expense amount. But Maryland’s MRP construct allows utilities to reconcile projected and actual spending, insulating utilities from the risk that they will be unable to recover increased O&M expense. This effectively ensures complete cost recovery, even for cost-ineffective operations.

⁷ Order No. 89868 at 85

⁸ Order No. 89868 at 94.

⁹ Order No. 9868 at 73.

¹⁰ Order No. 89678, Development of Awarded Revenue Requirement attachment.

BGE's O&M performance in its first MRP (covering 2021-23) illustrates this trend. The gas and electric O&M budgets approved by the Commission were lower than the company's O&M spend in 2020.¹¹ However, the company's actual O&M spend during the MRP was far higher: \$69.9 million higher for electric and \$50.6 million higher for gas. As a result, rather than realizing the benefits of the reduced O&M spend the Commission authorized, BGE customers are instead reimbursing the company—through the MRP reconciliation rider—for the vast majority of the amount it overspent.¹²

The opportunity for reconciliation provides another incentive for utilities to increase capital investments beyond what they normally pursue under standard ratemaking. Absent the opportunity for reconciliation, utilities adjust their capital budgets when faced with emergent circumstances. With reconciliation, utilities have no reason to adjust for new circumstances because they can recover both planned and unplanned expenditures in their entirety, leading to higher rates for customers.¹³

Both BGE and Pepco's MRPs exemplify this learning. In BGE's first MRP, the company exceeded the Commission's approved electric capital investment budget each year, for a cumulative total overspend of \$475.6 million. For gas, BGE exceeded its approved capital investment budget by a cumulative total of \$123 million. In a disturbing

¹¹ BGE's 2020 actual O&M spend was \$452.3 million for electric and \$235.7 million for gas. *See* Case No. 9645, Exhibit 22A Vahos Rebuttal, Company Exhibit DMV-3E and DMV-3G. The average annual O&M spend for MRP 1 approved by the Commission was \$440.2 million for electric and \$226.8 million for gas.

¹² In Order No. 90948, the Commission authorized BGE to recover reconciliation funding for Rate Years 1 and 2 totaling \$52.1 million for electric and \$21.7 million for gas. BGE is currently seeking to recover an additional \$78.9 million for electric for its Rate Year 3 reconciliation and \$73.3 million for gas..

¹³ *See* Case No. 9692, OPC Ex. 41A (Alvarez/Stephens Direct) at 25:1 – 26:2 (discussing how, in 2022, BGE overspent on discretionary projects despite exceeding its major storms budget).

trend, the company's gas and electric capital spend for each year exceeded the *proposed* MRP budgets that were reduced by Order No. 89678.¹⁴ Similarly, Pepco exceeded its forecasted MRP 1 capital spend by \$51.8 million, also surpassing—in each year—the proposed budgets that the Commission reduced. Not only have both utilities sought to—and, for Rate Years 1 and 2, been allowed to—recover the cost of these exceedances through the reconciliation riders, customers will be paying the company a return on these excess investments over the coming decades.

In short, the reconciliation mechanism insulates utilities from the negative consequences of ineffective project management and inaccurate project cost forecasting, and rewards utilities for spending in excess of what was approved. This opportunity for additional cost recovery—unavailable through standard ratemaking—is yet another factor that underlies the excessive capital investment plans proposed in each MRP proceeding and the commensurate growth in rate base.

The operative effect of the MRP construct is to increase utility cash flow and transfer from utility shareholders to utility customers risks investor-owned utilities experience under standard ratemaking for imprudent investment decisions and poor project management. Ratepayers lose the guardrails that limit imprudent and excessive spending and encourage cost-effective operations. Like standard ratemaking, MRPs are just another cost recovery mechanism. Unlike standard ratemaking, the design of the MRP construct encourages utility behaviors antithetical to the public interest and

¹⁴ In MRP 1 Rate Year 1, BGE's actual capital spend was \$90,000 less than the authorized budget.

prioritizes the pecuniary interests of monopoly utilities over the interests of the customers they serve.

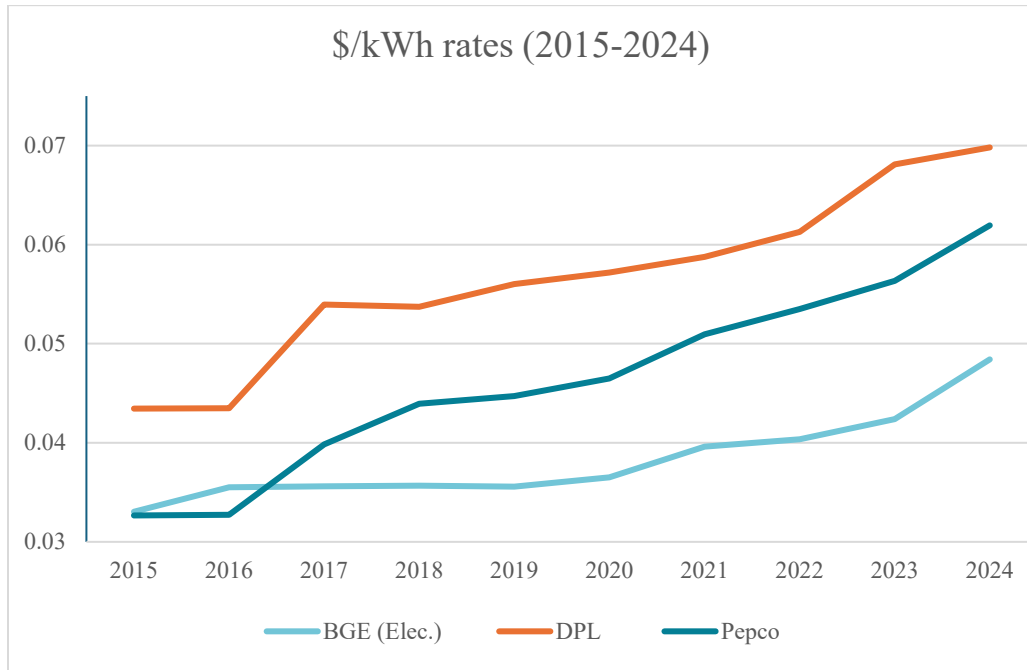
B. Customers are worse off under MRPs.

Measuring whether MRPs increase or reduce costs and improve utility performance relative to standard utility ratemaking would be a fraught task, as it would require comparing actual MRP outcomes to counterfactual or hypothetical outcomes based on assumptions of how a utility would have operated under standard ratemaking. Further, MRPs are not tethered to any performance metrics or goals. For example, as was the case before MRPs, utility reliability benchmarks are determined as part of a separate proceeding involving an independent review of utility reliability proposals.¹⁵ The capital investment plans considered for the development of utility reliability targets are presented and discussed independently of multi-year rate plan proceedings. Corrective actions and investments required to maintain compliance with those targets are also addressed as part of that proceeding. This process was in place before the advent of MRPs and does not depend on MRP based rates. Thus, it would be impossible to measure any reliability improvements attributable to MRPs, and any attribution of reliability benefits to them would likewise require assumptions or hypotheticals.

What we do know—without the need for hypotheticals—is that there is little indication of improved performance and cost-effectiveness in actual MRP outcomes, even as rates have increased significantly under MRPs. As OPC’s recent rates report

¹⁵ See, Case No. 9353, *Review of Annual Performance Reports on Electric Service Reliability Filed Pursuant to COMAR 20.50.12.11*.

shows, the cost recovery enabled by MRPs underlies significant increases in gas and electric rates for *each* of the utilities operating under multi-year rate plans.¹⁶ Figure 1 illustrates how electric rates have increased since 2015–2024.



On a percentage basis, BGE’s electric rates have increased by 26 percent since approval of its first MRP. DPL’s rates have increased by 14 percent since approval of its first MRP. And Pepco’s rates have increased by 22 percent since its first MRP. BGE’s gas rates, not illustrated in Figure 1, have increased by 43 percent since approval of BGE’s first MRP. Table 1, below, compares the pre-MRP average annual percentage rate increase to the average annual rate increase post-MRP.

¹⁶ See Appendix A, Office of People’s Counsel, *Maryland’s Utility Rates and Charges* (Aug. 2024).

Table 1

	Average Annual Rate Increase (2006-2020)	Average Annual Rate Increase under MRPs
BGE Electric	3.27%	5.01%
BGE Gas	6.51%	8.25%
DPL	5.20%	5.35%
Pepco	4.92%	7.46%

For each utility, MRPs have accelerated the pace of rate increases at levels well above the rate of inflation.¹⁷

These MRP-driven rate increases come at a time when Marylanders are already overburdened by high energy costs. In 2020, the average net energy burden¹⁸ for households at or below 200 percent of the federal poverty level was 12 percent.¹⁹ As of 2023, for the counties served by utilities operating under multi-year rate plans, the average energy burden for houses with monthly income up to 200 percent of the federal poverty line is 13.6 percent.

In contrast to the burden of high rates Maryland customers are paying under the MRPs, Exelon’s shareholders have done quite well. As Exelon’s Summer 2024 investor presentation states, BGE, DPL, and Pepco’s MRPs—as well as MRPs in other jurisdictions—drive the path to achieving the corporation’s 5-7 percent annualized

¹⁷ *Maryland’s Utility Rates and Charges* at 29, 34.

¹⁸ “Energy burden” refers to the percentage of one’s monthly take home pay required to cover energy costs. Households with 6% or greater energy burdens are considered high energy burden households; severe energy burdens are those that exceed 10 percent of income. *See American Council for an Energy-Efficient Economy, How High Are Household Energy Burdens? An Assessment of National and Metropolitan Energy Burden Across the United States* at 3 (Sept. 2020), <https://www.aceee.org/sites/default/files/pdfs/u2006.pdf>

¹⁹ Office of People’s Counsel, *Maryland Low-Income Market Characterization: September 2022 update*.

earnings growth target.²⁰ Exelon states that its expected \$18.5 billion growth in rate base over the next four years will “be 100% recovered through alternative regulatory mechanisms.”²¹ BGE, DPL, and Pepco comprise more than 30 percent of Exelon’s rate base. From 2021 through 2023, BGE, DPL, and Pepco paid out \$2.3 billion in common stock dividends to its only shareholder, Exelon.²² Over the same period, Exelon paid out more than \$4.2 billion in dividends to its shareholders.²³

Maryland’s experience with MRPs shows that customers bear a greater burden with no appreciable benefit. The utilities have not shown that precipitous MRP-driven increases in customer rates have led to *any* improvements in the quality-of-service utilities provide—much less improvements that are commensurate with the rate increases customers are bearing. And, as discussed below, MRPs have not brought Maryland any closer to achieving any specific policy goals, including greenhouse gas emissions reductions. Rather, Maryland’s MRP experiment shows that MRPs benefit the private interests of utility shareholders over the public’s interest in affordable rates.

II. MRPs do not produce the benefits the Commission anticipated.

Order No. 89226 identified several benefits of implementing MRPs: shortening the cost recovery period; ensuring more predictable rates and gradual rate increases; decreasing stakeholder burdens; improving transparency; and equitably distributing risks

²⁰ Exelon Corporation, *Summer 2024 Investor Meetings* at 22, <https://investors.exeloncorp.com/static-files/8b26ab69-e0b4-4d49-9d13-34a551265684>.

²¹ *Id.* at 11

²² Exelon Corporation, *Form 10-K* (Feb. 21, 2024) at 136 (BGE, \$908 million), 146 (Pepco, \$983 million), 151 (DPL, \$423 million), <https://investors.exeloncorp.com/static-files/170e5ea8-217e-407c-b3c2-374ae69f987f>

²³ *Id.* at 118 (\$1.497 billion in 2021, \$1.334 billion in 2022, and \$1.433 billion in 2023).

between utilities and customers.²⁴ These claimed benefits largely are reflected in the six topics the Commission seeks parties to address through their comments filed in this proceeding.

As will be discussed below, experience shows that MRPs have fallen well short of producing benefits, including those benefits the Commission identified when it authorized MRPs.

A. MRPs have not advanced State policy objectives.

With respect to the achievement of State policy objectives, the Commission should evaluate the performance of the MRP utilities under their respective multi-year plans using the general objectives provided in State law. Public Utilities Article sections 7-801 and 7-802 require the Commission to align electric system planning with State policy objectives in a cost-effective manner:

- Section 7-801 states that it is a “goal of the State” that the electric system, “in a cost-effective manner,” support the State’s policy goals concerning greenhouse gas reduction, renewable energy, the reduction of electricity imports, and achieving resiliency, efficiency, and reliability.
- Section 7-802 requires the Commission to report to the General Assembly on “electric system planning processes and implementation” that promote eleven specified policy goals and “any other issues the Commission considers appropriate.”
- Section 7-804 requires the Commission, on or before July 1, 2025, to “adopt regulations or issue orders to implement specific policies for electric system planning and improvements in order to promote the State’s policy goals” under section 7-802.

²⁴ Case No. 9618, Order No. 89226 at 53–54.

These policies provide a useful summary of the State’s policy goals by which the Commission can evaluate the MRP pilot, with the utility carrying the initial burden of showing State goals have been advanced. If they can make that showing, the Commission should determine whether the utility’s actions were uniquely enabled or supported by the MRP. If the Commission finds the utility could not have taken the actions it took outside of the MRP, the Commission should—consistent with section 7-801—determine if the utility’s actions to advance State policy objectives were taken in a “cost-effective manner.”

Order No. 89226 does not anticipate that MRPs alone will advance State policy objectives. The order generally concludes that “one or more forms of [alternative forms of regulation] *may* be helpful, *if carefully* implemented, in facilitating the achievement of the States ambitious goals”²⁵ Of the five alternative forms of regulation the Commission investigated in PC 51 and Case No. 9618, only performance-based ratemaking and surcharges and riders directly tied utility cost-recovery to the achievement of discrete performance or policy goals.²⁶ Ultimately, however, the Commission rejected those options in favor of MRPs—a form of cost-of-service ratemaking that is at best agnostic to State policy objectives.²⁷

The only real connection between State policy and MRPs is that in Order No. 89638, the Commission authorized utilities to propose performance incentive

²⁵ Order No. 89226 at 52–53 (emphasis added).

²⁶ In addition to MRPs, the Commission also evaluated the use of future test years and formula rates.

²⁷ Order No. 89226 at 53–54.

mechanisms (“PIM”) in MRPs.²⁸ Yet, the Commission’s order also authorized utilities to file PIMs in conventional base rate cases.²⁹ MRPs thus do not afford a unique ability to accommodate or support PIMs that is lacking in standard historic-test year ratemaking.

Given the lack of any logical, practical, or legal connection between MRPs and the advancement of State policy objectives, it is not surprising that MRPs have, in fact, *not* advanced State policy objectives. *First*, MRPs have proven to be an unwieldy and inappropriate forum for the proposal of new policy proposals, like the electrification plans that BGE and Pepco proposed in Case Nos. 9692 and 9702 respectively. As the Commission stated in striking BGE’s plan, “it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than in a base rate case, where the parties and the Commission are required to address a multitude of issues in a constrained time frame.”³⁰

Second, while BGE proposed a number of PIMs in its second MRP in the name of reducing greenhouse gas emissions, the Commission rejected them all. The Commission expressed “deep concern[s]” regarding how the structure of the PIMs related to “the value that the proposed PIMs are projected to provide to ratepayers.”³¹ Moreover, the Commission found the PIMs failed to accelerate policy goals beyond the utilities’ capability.³² Additionally, BGE’s PIMs could just as well have been proposed in a

²⁸ Order No. 89638 at 12.

²⁹ Case No. 9618, Order No. 89638 at 12.³⁰ Case No. 9692, Order No. 90755 at 9–10.

³⁰ Case No. 9692, Order No. 90755 at 9–10.

³¹ Case No. 9692, Order No. 90948 at 209.

³² Case No. 9692, Order No. 90948 at 209 (“Those programs therefore fail the second requirement of Order No. 89638 of accelerating the policy goal beyond the utility’s capabilities. Where the primary

conventional rate case, not the MRP structure. Thus, not only have MRPs failed to achieve results that advance State policy goals, but the Commission itself found that the utilities' *attempts* to do so through the MRP were inadequate.

Finally, assuming *arguendo* that MRPs have encouraged capital investment that has contributed to the advancement of State policy objectives, they have not done so “in a cost-effective manner,” consistent with PUA § 7-801. As detailed in Section I.A, MRPs fail to promote cost-effective utility spending. While operating under MRPs, utilities have proposed excessive capital budgets and spent well above their capital budgets while pursuing conventional infrastructure investments—i.e., system performance and capacity expansion—that are not tied to advancing specific state policy aims.

* * *

In sum, using MRPs to set rates and review proposed utility investments has done little, if anything, to advance Maryland's policy objectives, including those set forth in PUA §§ 7-801 and 7-802. There is no evidence that MRPs have improved system reliability and resiliency or reduced greenhouse gas emissions. Instead, we see that utilities have increased spending on distribution feeders, substations, pipes, and capacity expansion—all conventional utility investments that grow rate base and increase profits.

mechanism for meeting a policy goal is the investment of more capital or other ratepayer funds, rather than new approaches or efficiencies that are not currently incentivized by traditional ratemaking, such a goal is within the utility's capabilities for purposes of Order No. 89638.”).

B. Neither customers nor the State have benefited from reductions in regulatory lag.

The Commission requests that parties answer “whether the potential shortened cost recovery period was achieved and its impact on customers and other aspects of the rate making process such as cost disallowance.”³³ Reducing regulatory lag—the time between when costs are recovered after being incurred—enables utilities to recover costs contemporaneous to when their incurred. While MRPs have shortened the cost recovery period, that accelerated recovery has encouraged utilities to make unnecessary capital investments that drive-up customer rates. There is no evidence that reducing regulatory lag afforded any customer benefit.

1. Reduced regulatory lag contributes to excessive rates by encouraging utilities to make unnecessary capital investments.

In standard ratemaking, regulatory lag is a mechanism of constraint—utilities must wait until a subsequent rate change to begin recovering the costs of investments made after the most recent rate case, when that investment has proven useful to customers. Relative to an MRP, utilities are less inclined to pursue capital investments that are not cost-effective, since they must postpone recovery on those investments until the filing of their next rate case and face a prudence review.

MRPs, however, include forecasted additions to plant in base rates, thereby allowing utilities to recover the costs of new capital investments contemporaneous to when they are incurred.³⁴ By significantly reducing the period of regulatory lag, utilities

³³ See Md. Pub. Serv. Comm’n., *Notice* at 3, Case Nos. 9618 and 9645 (Errata dated Aug. 15, 2024) (ML# 311808).

³⁴ Order No. 89226 at 13.

obtain cost recovery between the time the investment is made and when the asset is used to serve customers. Under MRPs, this faster recovery combines with the freedom utilities have to propose—without any risk except potentially to their credibility—capital projects at a level far above what the utility would pursue under standard ratemaking, including projects that are premature, inappropriate, or not cost effective. Stated otherwise, reductions in regulatory lag increase the likelihood that utilities—logically pursuing their private interests—will be over-aggressive in increasing their capital expenditures, to the point they are no longer cost-effective.

Outside of regular adjustments to rate base, utility profitability is driven by how well costs are controlled. As utility costs rise, the earned rate of return falls; as utility costs lower, the earned rate of return increases.³⁵ Accordingly, regulatory lag incentivizes a utility to improve cost-effectiveness by enabling it to earn a higher rate of return. If a utility struggles to contain costs, however, the utility's resulting rate of return lowers the utility's profitability. Reducing the period of regulatory lag lessens the reward for containing costs and reduces the penalty for cost-ineffectiveness. This allowance for cost-ineffectiveness encourages utilities to maximize other opportunities to boost profitability, mainly through increases to rate base.

In sum, regulatory lag protects consumers because it forces utilities to constrain capital spending. It is a feature rather than a bug of standard ratemaking because it helps contain costs by discouraging excessive utility investment. The reductions in regulatory

³⁵ Order No. 89226 at 19.

lag with MRPs weaken an important consumer protection, to the benefit of utility's shareholders.

2. Reduced regulatory lag does not enable utilities to better advance State policy.

Utilities may claim that the mitigation of regulatory lag—the main reason for the establishment of the MRP pilot—induces them to advance State policy objectives in a way they would or could not, outside of an MRP. The apparent argument is that without an MRP, investors might hesitate to provide capital for policy-advancing investments because the Commission may deny cost recovery. According to this theory, MRPs de-risk such investments by providing contemporaneous recovery, along with relative certainty that the utility will keep what it recovers.

But at least as much security for investors can be obtained by a utility's seeking Commission approval for innovative, policy-advancing investments outside of a rate case. Indeed, this is the way that such investments—from the installation of smart meters to the development of EV charging stations and other EV incentives—have historically been proposed and approved in Maryland, and OPC is unaware of any instance in which a utility has struggled raise capital for such investments.

C. MRPs fail to ensure stable and affordable rates.

Order No. 89226 identifies rate predictability as a potential “benefit” of MRPs.³⁶ MRPs have, in fact, made rates more predictable; customers can see the extent to which their rates will increase in subsequent years. But residential customers, are less concerned

³⁶ Order No. 89226 at 54.

with rate predictability than with how rates will impact their monthly bill. In that sense, MRPs are no better at assuring predictable rates than rates set under standard ratemaking. Customer bills will always fluctuate due to changes in energy costs, seasonal weather patterns, and individual consumption habits. With an MRP, a residential customer may know how much their distribution rate will change over the next three years, but such information is of little import given the month-to-month variability in factors that affect the customer's monthly bill.

Residential customers benefit most from stable rates. Yet as Maryland's experience shows, MRP rates are hardly stable. In each of BGE, Pepco, and Delmarva's MRPs, distribution rates have risen annually. From the customer's perspective, there is no difference between a yearly rate increase resulting from an MRP and a yearly rate increase resulting from standard ratemaking.

Furthermore, under both MRP and standard ratemaking, the bill stabilization adjustment mechanism ("BSA") is used to adjust distribution rates on a monthly basis to ensure utilities earn no more and no less than the target revenue per customer.³⁷ These regular adjustments to customer distribution rates inject an additional degree of variability to customer rates that further undermines the purported benefit of rate "predictability" MRPs provide.

From the utility's perspective, predictable rates mean predictable revenues, and the Commission cited revenue predictability as another potential benefit of MRPs. Yet, the

³⁷ Order No. 90445 at 10–11.

BSA already assures revenue predictability for rates set in both standard ratemaking and MRPs. In accepting DPL's bill stabilization adjustment in Case No. 9618, the Commission explained that the BSA serves an important role in mitigating revenue fluctuations and ratemaking volatility.³⁸ Indeed, given the impact of the BSA, MRPs are no better than standard ratemaking at assuring predictable utility revenues.

D. MRPs increase stakeholder burdens compared to standard ratemaking.

MRP litigation is far more resource-intensive than litigating a standard rate case, requiring parties to review more complex applications and undertake significant discovery under a compressed timeframe. After a utility's first MRP, each subsequent MRP requires parties to review five years of actual and planned expenditures: the utility's actual investments during the first two years of the prior MRP must be reviewed for prudence, while three years of forecasted capital investments for the company's pending MRP are reviewed for contemporaneous recovery in going-forward rates. The scope of this review far exceeds that which is typical in a standard rate case—a review of additions to plant during the timeframe between the prior rate case and the end of the historic test year³⁹— but under MRPs parties have only three more months than they do in a standard rate case.⁴⁰

³⁸ Order No. 90445 at 23.

³⁹ See Case No. 9692, OPC Ex. 41A (Alvarez-Stephens Direct) at 40; Case No. 9702, OPC Ex. 32A (Alvarez-Stephens Direct) at 29.

⁴⁰ PUA § 4-204(b)(2)(ii) (authorizing the Commission to extend the 180-day rate suspension period set for standard rate cases “up to an additional 90 days if the filing is for an alternative form of ratemaking”).

As shown in each MRP, the proposed utility capital plans are ambitious, comprising hundreds of projects that stakeholders must individually sort through *before* determining what discovery may be necessary. And the constrained discovery timeframe requires parties to expedite their review of these materials, thereby imposing a significant burden at the immediate outset of the rate case. Meanwhile, the prudence review for the first two years of the prior MRP requires parties to review thousands of projects, work orders, timecards, and accounting records for comparison with information used for the Commission’s initial approval. As Staff witness Valcarengi candidly stated in Case No. 9692, “it’s a lot of work.”⁴¹

Staff’s request that the Commission postpone consideration of Pepco’s MRP—due, in part, to the burden of reviewing BGE’s MRP—exemplifies the heavy logistical and resource burdens that MRPs impose on parties.⁴²

A meaningful evaluation of future capital investments necessarily entails consideration of a utility’s short-, medium-, and long-term distribution plans. But injecting a comprehensive review of a utility’s proposed distribution system plan would introduce additional complexity to an MRP case that requires stakeholders to expend additional resources. There are significant informational asymmetries that must be overcome for any distribution system planning review to be meaningful. Each utility also has its own distribution system planning process and capabilities,⁴³ requiring stakeholders

⁴¹ Case No. 9692, Tr. 1616:7–8 (Valcarengi).

⁴² Case No. 9702, ML# 303315, Office of Staff Counsel Request for Postponement (June 2, 2023).

⁴³ Order No. 90777 at 9.

to first develop a basic familiarity through discovery with the utility's planning process before ever being able to assess whether the results of that process are reasonable. Then, voluminous discovery is required to evaluate how a proposed project fits into the utility's future plans. The complexity of this analysis makes it difficult to conduct an appropriate prudence review of distribution investments in the compressed timeframes of an MRP case.

Furthermore, unlike a standard rate case that concludes with the Commission's final order, MRPs require ongoing stakeholder engagement well after the final order is issued. For example, parties must review utility annual information filings, with only 90 days afforded for discovery *and* comments. Parties must also litigate post-rate case reconciliation proceedings, which impose *additional* discovery burdens.

No evidence demonstrates that the administrative burdens imposed by MRPs are lighter than standard ratemaking burdens. Rather, experience shows that MRP cases have *increased* administrative burdens for stakeholders. Having participated in five MRP base rate cases and reviewed annual information filings and project lists filed by each MRP utility, OPC's experience is that MRPs are far more resource-intensive and burdensome than standard rate cases. The expanded scope of an MRP rate case entails additional personnel and consultant hours that vastly exceed that of the standard base rate case. Although to date OPC has not performed a detailed analysis, based on our continuing experience we believe litigating annual utility standard rate cases is more efficient than any gains possible through MRPs.

E. The transparency benefits of MRPs are illusory.

Given that MRPs are forward looking, there is no dispute that as a general matter MRPs afford stakeholders greater insight into utility planning than standard ratemaking. In practice, however, these increases in transparency are largely illusory and have yielded few tangible benefits that outweigh the detrimental impacts to customers.

1. Increased transparency is not meaningful when utilities have discretion to change their capital investment priorities during an MRP.

The opportunity for stakeholders to review utility capital investment plans in advance is indeed an improvement in transparency. Unlike standard ratemaking, stakeholders have the opportunity evaluate the work that a utility plans to complete and, if warranted, to recommend appropriate adjustments.

But such transparency means little when the stakeholder review has little impact on the work a utility actually chooses to perform. The MRPs give utilities discretion to deviate from their proposed capital plans that were subject to stakeholder and Commission review. The Commission has repeatedly emphasized that its review of a capital plan proposed in an MRP is not a prudence review. Rather, the proposed project list serves “as a guide for prudence” with respect to “the individual projects the utility *elected* to construct and the actual costs of the individual projects with the final reconciliation is performed.”⁴⁴ Just as with standard ratemaking, the utility “remain[s]

⁴⁴ Order No. 89678 at 96 (emphasis added).

responsible for determining how much it needs to spend, how best to spend in order to satisfy its obligations to provide safe, affordable, and reliable electric service[.]”⁴⁵

There is some sense in utilities retaining such discretion with respect to projects necessary to ensure system safety and reliability, as the utilities are best positioned to determine the necessary work that should be prioritized. But with respect to more discretionary capital investments, such discretion renders hollow the transparency benefits that advanced review of utility capital plans provide. For instance, in Case No. 9702, AOBA witness Bruce Oliver testified that more than half of Pepco’s capital expenditures for Rate Years 1 and 2 of the company’s first MRP represented significant and material deviations from the capital budgets and project list that stakeholders and the Commission reviewed in Case No. 9655.⁴⁶ There is little benefit to having multiple “bites at the apple” to review and challenge utility capital investments if that first “bite” is not meaningful.⁴⁷

2. The actual transparency afforded by advanced review of forecasted capital plans is limited.

As noted above, MRP rate cases require stakeholders to review five years of utility capital investments. This expansive scope of spending and project review limits the transparency improvements the MRP affords.⁴⁸

First, the MRP’s advanced review process limits the ability of parties to consider

⁴⁵ Order No. 89868 at 68.

⁴⁶ Case No. 9702, AOBA Exhibit 9 (Direct Testimony of Bruce R. Oliver) at 14:3-18.

⁴⁷ Case No. 9702, OPC Reply Br. at 11–12.

⁴⁸ Case No. 9692, OPC Exhibit 42A (Alvarez/Stephens Surrebuttal) at 11, line 15 through p. 12, line 8.

long-term utility goals and cost-effective alternatives available for achieving those goals. MRPs provide only a three-year window into the utility’s plans. MRPs do not require utilities to provide additional visibility into the longer-term plans underlying the proposed MRP investments, and the utilities do not provide it. The resulting lack of context for proposed programs limits the Commission’s capacity to ensure that utilities’ short-term plans align with long-term plans, and that long-term plans are pursued cost-effectively and not piece-meal.

Second, the utilities limit transparency by heavily curating the information they provide in MRP filings. Those filings provide general program descriptions and budget projections, and largely consist of brief, high-level explanations for hundreds of projects that give the Commission only a limited view of the utility’s short-term spending plans. Just as in a standard rate case, stakeholders must engage in significant, burdensome discovery to attempt to understand the context, justification, and reasonableness of the utility’s planned investments.⁴⁹

In any event, the information provided through discovery is often insufficient or piecemeal. In Case No. 9645, the Commission noted that “there is significant room for improvement with regard to the transparency of the stakeholder-engaged planning process[.]”⁵⁰ In Case No. 9655, the Commission found that “asymmetries of information impeded parties’ ability to fully evaluate and respond to Pepco’s proposal,” and expressed

⁴⁹ Even the business case presentations utilities provide to support certain projects have proven insufficient to demonstrate the necessity of a given project without additional discovery.

⁵⁰ Order No. 89678 at 104–105.

frustration with the difficulty stakeholders had in evaluating the information provided by the utility. The Lessons Learned proceeding conducted in 2022 resulted in some improvements to the minimum filing requirements of the initial MRP application, but in the two MRP rate cases that followed, stakeholders still found wanting the transparency of the information provided in the MRP application and in discovery.⁵¹

Even with the utilities providing too little information and context to fully evaluate their plans, it has been an extraordinary challenge for parties and the Commission to review the volume of information that is provided in the highly constrained MRP timeframe. Assessing forecasted capital investments requires analysis of a utility's grid operations, the technologies it employs, and its approach to system planning and asset management.⁵² Such analysis requires reviewing of thousands of pages of discovery and exhibits—parties are forced to pick and choose what they review—thereby increasing the likelihood that imprudent investments evade scrutiny and be included in customer base rates.

Injecting a comprehensive review of a utility's distribution system investment plan into the context of a rate case shortchanges the quality of that review and increases the risk that customer rates may include the costs of unnecessary, premature, or imprudent projects. Moreover, the Commission established separate proceedings for purposes of

⁵¹ *E.g.*, Case No. 9692, OPC Reply Br. at 4–6; Case No. 9702, OPC Initial Br. at 15–16, OPC Reply Br. at 15, AOBA Initial Br. at 8–9.

⁵² Case No. 9645, OPC Exhibit 41A at 36, lines 6–8.

assessing utility distribution system planning⁵³ and reliability planning.⁵⁴ As exemplified by the significant capital spending authorized for recovery through MRP base rates, injecting into a rate case a review that is properly conducted in a separate docket leads to harmful ratemaking outcomes for customers.

3. Advanced approval of utility expenditures in an MRP narrows the scope of prudence review and increases the burden of demonstrating imprudence.

The transparency benefits advanced review affords are eclipsed by the reduced likelihood that imprudent investments within those plans may be disallowed. In a conventional base rate case, the prudence review of a utility's expenditures covers both the utility's decision to undertake certain programs and projects and its execution of those programs and projects. In an MRP, by contrast, the Commission first approves programs and projects for purposes of inclusion in a utility's revenue requirement, then reviews the execution of those programs and projects for purposes of prudence years later,⁵⁵ with the approved MRP capital investment plan serving as "a guide for prudence."⁵⁶ Under this construct, prudence in planning is detached from prudence in execution, and the scope of prudence review is effectively narrowed to the former.

Approval of a utility's forecasted plan substantially increases other parties' burden to show that approved programs and projects were imprudent and reduces the risk of

⁵³ Case No. 9665, Order No. 91256 at 10–11 (July 30, 2024) (establishing annual technical conference hearing for distribution system planning).

⁵⁴ See generally Case No. 9353, *Review of Annual Performance Reports on Electric Service Reliability Filed Pursuant to COMAR 20.50.12.1*

⁵⁵ Order No. 90948 at 2.

⁵⁶ Order No. 89482 at 24.

disallowance, relative to standard ratemaking where there is no pre-approval. In a ratemaking construct, what customers gain from potentially greater stakeholder transparency is outweighed by the consequences of ever-increasing base distribution rates driven by bloated utility investment plans—and the fact that the Commission can take other measures to increase transparency while using time-tested standard ratemaking.

F. MRPs have not improved utility innovation.

Innovation means a “new method, idea, or device,” or “the introduction of something new.”⁵⁷ Although innovation is often characterized as invariably beneficial, what is new is not necessarily in the public interest. For innovation to have public interest value, it must serve a purpose or end that has such value. With respect to regulated utilities, innovation has value to the extent that it leads to improved utility performance in areas that the General Assembly or the Commission has recognized as being in the public interest, such as system reliability or the reduction of greenhouse gas emissions.

In competitive businesses, innovation is driven by competition. Firms develop new products or services—or as is often the case today, new ways of selling existing products or services—to gain market share. For monopoly utilities—which already have 100 percent of their markets—innovation is driven by the opportunity for higher profits through the expansion of rate base. The question before the Commission in this proceeding is whether the MRP structure has motivated the State’s electric utilities to

⁵⁷ Merriam-Webster; available at <https://www.merriam-webster.com/dictionary/innovation>.

innovate in ways that further the objectives on which the Commission has requested comments in this proceeding.

The answer is clearly “no.” There is no indication that utility innovation has improved because of MRPs. As a threshold matter, it is not clear what sort of “innovation” the Commission envisioned MRPs would foster, as Order No. 89226 provided no benchmarks. The Commission has repeatedly and correctly held that consideration of novel and innovative policy proposals in the context of a rate case is inappropriate.⁵⁸ Indeed, to the extent the resilience investment and climate solutions programs BGE and Pepco have proposed for their MRPs are the sort of innovation MRPs were intended to foster, the fact that the Commission rejected each of those programs indicates a clear view that the ratemaking process is not a vehicle for developing new utility policies.

Utility innovation is fostered in a number of ways that do not involve ratemaking or depend on accelerated cost recovery. Since 2008, the EmPOWER program has enabled utilities to propose and develop different approaches to improving energy efficiency. The Commission has administered pilot programs exploring the use of battery energy storage

⁵⁸ Case No. 9692, Order No. 90755 at 9–10 (“[I]t is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than in a base rate case, where the parties and the Commission are required to address a multitude of issues in a constrained time frame. . . . Neither stakeholders nor the Commission should be limited to the strict statutory timeline of a rate case in submitting and evaluating those plans.”); Case No. 9702, Order No. 91048 at 14 (“The Commission continues to agree that it is prudent and consistent with Commission precedent to consider major policy proposals in a separate docket rather than a base rate case where the parties and the Commission must address a myriad of issues in a compressed time frame.”)

systems,⁵⁹ the accommodation and expansion of transportation electrification,⁶⁰ and alternative forms of rate design such as time-of-use rates.⁶¹ None of these programs require utilities to operate under an MRP, and recovery of capital costs related to these programs is all but assured, provided the utility’s pilot is prudently managed.

A review of BGE, DPL, and Pepco’s MRPs evidences little “utility innovation.” Rather, utilities are pursuing conventional safety, reliability, and capacity expansion investments at an accelerated pace.

III. MRPs are not necessary to improve utility performance and ensure adequate utility compensation.

The Commission’s primary mechanism for utility cost recovery is standard, historic-test-year ratemaking. As the Commission explains, “the [historic-test-year] evaluates the costs incurred by the utility in a recent 12-month period and serves as a reference period for developing the utility’s costs for the prospective period when rates will be effective.”⁶² Capital cost recovery is limited to prudent investments that are “used and useful”—currently serving customers.⁶³ Stated otherwise, standard ratemaking sets rates based the costs utility has *actually incurred*, rather than costs a utility *anticipates* or would like to incur in the future.

⁵⁹ See, e.g., Case No. 9619, Energy Storage Pilot Program; Case No. 9715, Maryland Energy Storage Program.

⁶⁰ See, e.g., Case No. 9478, *In The Matter of the Petition of the Electric Vehicle Work Group for Implementation of a Statewide Electric Vehicle Portfolio*; Case No. 9696, *Baltimore Gas and Electric Company’s Application for an Electric School Bus Pilot Program*.

⁶¹ See, e.g., PC44 – Rate Design Workgroup, Commission Letter Order dated November 28, 2017 (pilot programs that offer Time of Use rates).

⁶² Case No. 9618, Order No. 89226 at 6.

⁶³ PUA § 4-101.

Accordingly, under standard ratemaking, utilities—rather than customers—bear risks from imprudent and excessive capital investment, inaccurate cost forecasting, and poor operations management. This allocation of risk is appropriate, given that the utilities are the entities with the tools to mitigate those risks. The possible disallowance of previously incurred capital costs imposes a heavy economic penalty on utility shareholders. The possibility that a regulator may impose such a penalty by denying cost recover for capital investments deemed not used or useful or imprudently incurred encourages utilities to moderate capital spending and focus on less risky projects.⁶⁴ Moreover, standard ratemaking incentivizes economically efficient behavior by allowing utilities to increase their rate of return by reducing operational costs. In short, standard ratemaking rewards utilities for prudent investment and cost-effective management, while disincentivizing risky investment and poor management.

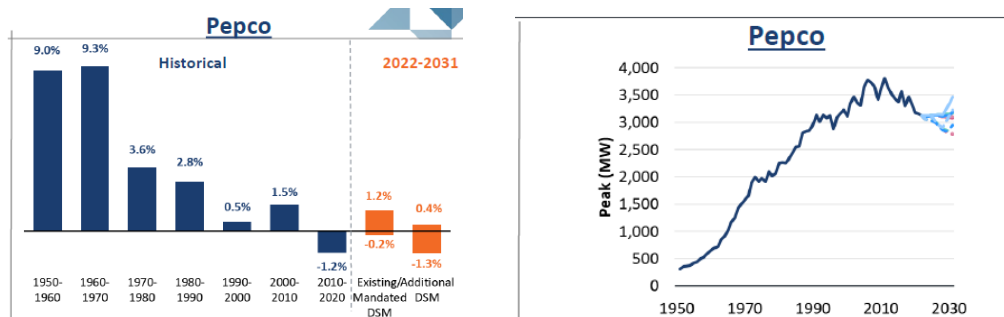
History shows that, over the past one hundred years, standard ratemaking has served both investors and utilities well. Since the early 1920s, utilities operating under the standard ratemaking construct have been able to meet challenges posed by necessary service expansions to serve new customers and accommodate rapid advances in technology and consumption habits.⁶⁵ Maryland's utilities have had little difficulty attracting the capital necessary to finance their investments. And shareholders have

⁶⁴ Case No. 9692, OPC Ex. 41A (Alvarez-Stephens Direct) at 34.

⁶⁵ Case No. 9702, OPC Ex. 32A (Alvarez-Stephens Direct) at 20:7–21:7, Figure 2.

reaped benefits from the assurance that sound management and prudent investment will be profitable.⁶⁶

The utility’s historical success in meeting customer needs over decades of significantly higher growth demonstrates standard ratemaking’s ability to bring benefits to customers and investors alike. Pepco’s historical data analyzed in the PSC’s electrification study, for example, shows how standard ratemaking accommodated Pepco’s need to address rapid electric growth—as much as nine times greater than recent Brattle’s projections through 2031:⁶⁷



We are unaware of any evidence that utilities generally or Maryland utilities specifically had any problems with access to capital during these periods of rapid growth, nor any theory as to why standard ratemaking somehow will inhibit utilities from accessing capital for the much smaller rates of growth anticipated in the coming years.

⁶⁶ See generally, Edward Jones, *Investing in the Utilities Sector* (Aug. 5, 2024), <https://www.edwardjones.com/sites/default/files/acquiadam/2023-06/investing-in-the-utilities-sector.pdf>.

⁶⁷ *An Assessment of Electrification Impacts on the Maryland Electric Grid*, The Brattle Group for the Maryland Public Service Commission at 100-01 (Dec. 19, 2023), <https://www.psc.state.md.us/wp-content/uploads/Corrected-MDPSC-Electrification-Study-Report-2.pdf>.

CONCLUSION

No evidence demonstrates that MRPs have provided any appreciable benefits to Maryland. MRPs have not improved utility performance. MRPs have not advanced state policy goals. And MRPs have not led to any innovations that advance the public interest. Instead, MRPs have driven historically high distribution rates while reducing the risks to the utility of underperformance and excessive investment. Ratemaking mechanisms serve a singular, limited purpose: ensuring appropriate cost recovery for expected utility performance. The Commission has other avenues for establishing utility performance obligations and reviewing utility plans. Maryland's experiment with MRPs has failed customers and enriched utility shareholders. The Commission should terminate the MRP pilot.

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