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BILL NO.: House Bill 0518 – Public Service Commission –
Performance-Based Regulation – Study

COMMITTEE: Economic Matters Committee

HEARING DATE: February 8, 2024

SPONSOR: Delegates Taveras and Woods

POSITION: Informational

The Office of People's Counsel ("OPC") respectfully provides the following information about how House Bill 518 would duplicate recent work of the Public Service Commission ("PSC").

HB 518 would require the PSC to "conduct a study to investigate the feasibility of and develop a framework for transitioning utility regulation in the State to a performance-based regulation model." The bill would require PSC, in consultation with interested parties, to develop recommendations for any legislative action necessary to implement a performance-based regulation model in the State.

While OPC appreciates the intent of the legislation to align public utility performance with the interests of ratepayers and state policy goals, the study required by HB 518 would duplicate the thorough investigation previously undertaken by the PSC through Public Conference 51 ("PC51"). Initiated in 2019, PC51 examined five forms of alternative ratemaking used in other states and how they might be applied in Maryland: fully forecasted test years, multi-year rate plans, formula rates, surcharges and riders, and performance-based ratemaking.¹ After a survey of alternative ratemaking in

¹ PSC Order No. 89226, *Order on Alternative Forms of Rate Regulation and Establishing Working Group Processes* (Aug. 9, 2019). All PSC orders are available by searching the order number at <https://webpsc.psc.state.md.us/DMS/commissionorders>. p

approximately 35 other states and a stakeholder process that included a two-day technical conference and multiple opportunities for comment, the PSC determined that properly constructed multi-year rate plans could result in just and reasonable rates and yield public benefits over time and directed a working group, led by the Public Utility Law Division, to address, among other things, “how best to integrate performance-based measures into a multi-year rate plan.”²

Upon receipt of the working group’s report, the PSC determined that “performance incentive mechanisms” (“PIMs”) “can serve as a valuable regulatory tool, with the potential to provide measurable benefits to both Maryland’s ratepayers and utilities, while advancing State policies and interests.”³ The PSC did not expressly endorse or eliminate any particular PIMs, but rather authorized the utilities to submit in rate cases, proposals for PIMs that are “tethered to a recognized State policy, accelerate the policy goal beyond the current utility’s capabilities, show measurable benefits to ratepayers, and contain metrics which show baseline data over a specific timeframe.”⁴ Subsequently, the PSC also authorized utilities to propose PIMs in their EmPOWER plans. Since that time, utilities have proposed PIMs both in their EmPOWER plans and in rate cases, and in its decisions, the PSC has clarified its expectations of PIMs.⁵

Given the extensive investigation of performance-based regulation in PC 51 and the PSC’s ongoing work to determine the appropriate role for PIMs in utility regulation, a wholesale reevaluation of, and mandatory transition to, a performance-based regulation model may not be either warranted or a beneficial use of time and resources.

² *Id.* at 56-58.

³ PSC Order No. 89638, *Order Approving Performance Incentive Mechanisms* at 16 (Sept. 29, 2020).

⁴ *Id.* at 16-17.

⁵ *See e.g.*, PSC Order No. 90957, *Order Authorizing Transition to 2024-2026 [EmPOWER] Program Cycle* at 74 (Dec. 29, 2023) (rejecting proposed PIMs).