

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

In The Matter of Alternative Rate Plans or
Methodologies to Establish New Base Rates for an
Electric Company or A Gas Company

Case No. 9618

Application of Baltimore Gas and Electric for an
Electric and Gas Multi-Year Plan

Case No. 9645

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December 13, 2024

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INTRODUCTION

Multi-Year Rate Plans (“MRPs”) have failed to serve the interests of Maryland utility customers. Across five rate cases and billions of dollars in utility investments, the most tangible outcome of MRPs has been unprecedented rate increases for customers with no discernible benefits—for system reliability, Maryland’s climate policy, or otherwise—in return.

Distribution rates for the three Maryland utilities operating under MRPs (collectively, “the Exelon companies”) have reached historic highs, with customers of those utilities bearing average annual rate increases exceeding 6 percent.¹ By 2024, a typical Baltimore Gas and Electric (“BGE”) electric customer consuming 900 kWh per month will pay \$145 more annually for distribution service than in 2020, while typical BGE gas customers face annual increases exceeding \$250 for that same time period.² Customers of the other Exelon companies, Potomac Electric Power Company (“Pepco”) and Delmarva Power & Light Company (“Delmarva”), have experienced similar hardships: Pepco customers pay \$172 more for distribution service after three years of service under an MRP; and Delmarva customers are paying \$97 more annually for distribution service just two years into the company’s MRP.³

These rate increases reflect a surge in capital expenditures and operating costs under the MRP framework. For example, BGE’s gas and electric plant additions during

¹ Based on the averages for BGE gas, BGE electric, Delmarva and Pepco. *See* OPC Initial Comments, Appendix A, Office of People’s Counsel, *Maryland’s Utility Rates and Charges* (Aug. 2024).

² *See* OPC Initial Comments, Appendix A at 49 (electricity) and 48 (gas), (Aug. 2024).

³ *Id.* at 70 (Pepco), 63 (Delmarva).

its first MRP exceeded \$2.4 billion,⁴ even after the Commission reduced BGE’s authorized gas and electric rate bases by \$231.5 million and \$427.4 million respectively.⁵ Similarly, the company failed to deliver the operations and maintenance (“O&M”) cost reductions it promised in its first MRP by overspending its projected O&M budget by over \$100 million.⁶

At the heart of these issues is the structural design of MRPs, which encourages unnecessary increases in capital spending and discourages cost-effectiveness by shielding utilities from the financial risks to which cost overruns and operational inefficiencies expose them under standard ratemaking. By replacing standard ratemaking’s evaluation of actual expenditures with a review of proposed forecasted utility budgets, MRPs incentivize utilities to propose aggressive and expansive investment plans. These plans transfer the risk of inaccurate forecasting, mismanagement, and cost-ineffectiveness from utilities to customers. Under MRPs, customers end up paying higher rates for utilities’ failure to control O&M expenses and for excessive capital investments, both in the near term and over the long run.

While the Commission may have hoped that MRPs would be a “win-win” for utilities and customers, it is now clear that they are a solution in search of a problem. The standard ratemaking process—grounded in historic test-year data and actual utility

⁴ ML# 308670, BGE Annual Information Filing for 2023, Attachment 2-E and 2-G (showing BGE 2023 Actual plant-in-service balance of \$8.4 billion for electric and \$4.6 billion for gas); Case No. 9645, Vahos Direct, Schedules 3E and 3G (showing BGE 2019 plant-in-service balance of \$7.09 billion for electric and \$3.4 billion for gas).

⁵ Order No. 89678, Development of Awarded Revenue Requirement attachment.

⁶ OPC Initial Comments at 7 (derived from BGE annual information filings for MRP 1 Rate Years 1–3).

performance—has long addressed the needs of utilities and customers. MRPs, on the other hand, create systemic inefficiencies by incentivizing utilities to overbuild their systems, pursuing projects before they are needed or opting for costly capital upgrades over lower-cost solutions.

These systemic inefficiencies are not accidental. Incentivizing excessive capital spending is a key feature of MRPs, not a bug. The Exelon companies—tout the opportunity for increased investment as a principal benefit of MRPs.⁷ Yet the very components of MRPs that drive such spending, primarily the reconciliation mechanism, do not operate to the customer’s advantage.

Instead, customers are left paying the price for a system that prioritizes the private interests of utility shareholders over the public interest.

The utilities attempt to buttress their self-interested argument for MRPs with speculative benefits that have not materialized. Despite years of implementation, utilities have failed to provide any evidence of how MRPs benefit the public or advance state policies. In fact, the evidence demonstrates that MRPs have failed to achieve any of their purported benefits. MRPs are more (rather than less) burdensome to litigate than standard ratemaking cases. MRPs have not led to significant improvements in the reliability performance for any of the MRP utilities—each of which had already achieved first quartile reliability performance due to previous spending recovered through standard

⁷ BGE Initial Comments at 13, PHI Initial Comments at 18.

ratemaking.⁸ MRPs have failed to advance Maryland’s climate policies; all of those efforts are instead being pursued—as they should—in work groups tasked with developing programs to implement those policies. The Exelon companies have not demonstrated any utility innovation attributable to their MRPs. Instead, the utilities continue to rely on traditional investment strategies aimed at expanding their rate base—albeit on a significantly larger scale.

To protect consumers, the Commission should terminate the MRP pilot and sunset the MRP construct. The existing framework shifts financial risks onto customers while incentivizing excessive spending and underperforming utility operations. Ending the pilot is necessary to restore balance, accountability, and fairness to Maryland’s ratemaking process.

⁸ By 2020, BGE, Pepco and Delmarva had each achieved top quartile performance in both of two key reliability metrics, System Average Interruption Duration Index (“SAIDI”) and System Average Interruption Frequency Index (“SAIFI”). *See* Office of People’s Counsel, *Comments of the Office of People’s Counsel Regarding the 2020 Annual Performance Reports Filed Pursuant to COMAR 20.50.12.11*, at 17, Figure 2, 18, Figure 3 (June 4, 2021) (ML# 235643).

ARGUMENT

The Public Utilities Article requires rates authorized by the Commission and charged by public utilities to be just and reasonable and “consistent with the public good.”⁹ **Section I** below explains the problems with the MRP construct’s essential components and shows that the outcomes of MRP ratemaking have failed to align with the public interest and achieve the benefits the Commission intended. **Section II** demonstrates that MRPs are not needed to advance state policy goals. **Section III** discusses how reforms to the MRP construct proposed by the Exelon companies and other stakeholders do not and cannot remedy the core problems of MRP ratemaking. Finally, **Section IV** recommends that the Commission sunset the MRP pilot by placing an immediate moratorium on the filing of any new MRPs and invoking an off-ramp for currently effective MRPs.

I. The MRP construct is not in the public interest and has failed to produce results in the public interest.

The results of Maryland’s experiment with MRPs show that the ratemaking construct is inconsistent with the public interest and leads to rates that are not just and reasonable. Section I.A identifies the four essential features of the MRP construct that underlie the deleterious outcomes of MRPs. Section I.B discusses the actual results of MRP ratemaking and shows how customers are worse off under MRPs.

⁹ PUA §§ 4-101.

A. The MRP construct has structural flaws that reward utilities and shift risks to customers.

The essential features of the MRP construct demonstrate its irreconcilability with the public interest. These features include: (1) advance review of capital workplans; (2) reliance on utility forecasts; (3) the opportunity for reconciliation; and (4) the reduction in regulatory lag. As explained below, these features—individually and especially in combination—result in ratemaking that rewards utility gold-plating, discourages cost-effectiveness, shifts risks typically borne by utilities to customers, and undermines critical consumer protections.

1. Advanced review of capital workplans cannot provide meaningful insight into utility planning decisions and effectively narrows the scope of subsequent prudence review.

Advanced review of utility capital workplans is a required component of multi-year ratemaking. Utilities must provide proposed workplans to support the forecasted rate base used to determine the revenue requirement for each year of the MRP.¹⁰ While these workplans provide some useful information regarding the utility's plans for the next several years, the MRP construct's reliance on the advanced review of utility workplans does more harm than good for five reasons.

First, the usefulness of these workplans is limited. MRP workplans do not explain—and are not required to discuss—how they fit into whatever longer-term plans may underlie proposed MRP investments.¹¹ This lack of context limits the Commission's

¹⁰ Order No. 89482 at 23–24.

¹¹ OPC Initial Comments at 26.

capacity to ensure that short-term spending is aligned with long-term goals and that long-term utility and state policy goals are pursued cost-effectively and not in a piecemeal fashion.¹²

Second, advanced review of planned utility expenditures narrows the scope of prudence review associated with the investments included in any approved workplan. In a standard rate case, the prudence review of capital expenditures concerns both the need and purpose of the project and the prudence of the project's execution. With MRPs, however, the Commission considers the purpose and need of the projects included in the proposed workplan as part of the base rate case and then reviews the execution of the projects separately during the prudence review years later. Although Order No. 89482 states that the Commission's initial review does not constitute pre-approval of any individual project or cost, the practical effect of incorporating advanced review of utility planning in ratemaking is to narrow the scope of the designated prudence review to reviewing project execution only. The Commission is unlikely to disallow the costs of a project included in an approved MRP—and the utilities know it. BGE's own representative confirmed this point during the October 2024 hearings: "I think the prudence determination is more about the execution. So, if the utility comes in with an investment plan, which is what a multi-year case is really all about, they execute that."¹³

The ongoing proceedings regarding the reconciliation of the final year of BGE and Pepco's respective first MRPs exemplify how MRPs undermine prudence review. In

¹² OPC Initial Comments at 26.

¹³ Tr. 48:17-19 (Mr. Mark Case).

those proceedings, each utility's reconciliation filing focused on cost variances related to spending incurred during that year rather than identifying the purpose and need of each project placed into service.

Third, review of forecasted capital workplans substantially increases the burden for stakeholders to identify and demonstrate imprudent spending. The inclusion of a project in an approved MRP effectively weighs the scale in favor of that project's prudence during the subsequent reconciliation proceeding.¹⁴ Moreover, the volume of information required for stakeholders to fully review forecasted capital investments is immense. As AOBA's initial comments explain, such reviews are "far more difficult and time consuming than the reviews of past actual expenditures" typical under standard ratemaking.¹⁵ Resource-constrained parties must therefore pick and choose what projects to review, thus increasing the likelihood that imprudent investments evade scrutiny and are included in customer rates.¹⁶

Fourth, advanced review of utility workplans in MRPs provides limited insight into the actual work that will eventually be completed because the utilities retain full discretion to change the capital investment plans approved by the Commission. Advanced review of capital plans in MRPs has not meaningfully benefitted stakeholders because the plans the utilities have implemented are entirely different from the plans that were approved.

¹⁴ OPC Initial Comments at 27.

¹⁵ AOBA Initial Comments at 9.

¹⁶ OPC Initial Comments at 27.

Finally, advance review of utility workplans rewards excessive capital spending that drives up customer rates. There is no limit on the number of projects a utility can propose for inclusion in an MRP. Given the reduced risk that a project included in an authorized MRP will be found prudent and the opportunity for contemporaneous recovery of forecasted project costs that MRPs enable, there are significant upsides for a utility to present a bloated capital investment plan that exceeds what is necessary and sufficient to serve customers safely and reliably. In the absence of limitations or restraints on how much spending a utility workplan can include, the advanced review of utility workplans rewards utilities that present project “wish lists” to the Commission.

2. MRPs are flawed because they rely heavily on utility forecasts that have been shown to be inaccurate.

Setting rates on forecasted costs is inherently problematic. At best, a forecast is an educated guess of how much something may cost at a future point. While an historic test year provides a snapshot of the utility’s actual rate base and operational costs over a specific period, a forecasted test year provides a snapshot of what the utility *thinks* its rate base and operational costs will be. As the Commission recognized in Order No. 89226, relying on the utility’s own projections “makes it difficult for regulators to accurately forecast utility operations, and may lead to misaligned incentives that unfairly benefit the utility at the expense of the ratepayer.”¹⁷ Stated otherwise, relying on utility forecasts

¹⁷ Order No. 89226 at 11.

exacerbates the effects of information asymmetry and exposes ratepayers to the risk of unnecessary rate increases.¹⁸

Before the MRP pilot, the Commission consistently rejected utility requests to set rates based on forecasted expenditures.¹⁹ Indeed, while Commission practice allows for the inclusion of post-test year reliability plant additions and adjustments for known and measurable O&M expense,²⁰ the Commission has consistently noted the intrinsic problems in relying on utility forecasts to set rates. As explained in its denial of Washington Gas’s proposal to include costs twenty-one months beyond the historic test year, the Commission explained that the “forecasted test year would create adjustments that are not known and measurable, plant additions that are not used and useful, and adjustments that lack a reasonable degree of certainty and are speculative.”²¹

The Commission’s concerns with Washington Gas’s proposed forecasted test year apply equally to the forecasted test years that comprise MRPs. Adjustments to rate base and O&M expense based on estimated costs that may be incurred in three years are not known and measurable. Projects included in the forecasted rate base may be delayed or, in some cases, completely abandoned, resulting in base rates that reflect the costs of projects that are not and may never be used and useful. It is far from certain that the need

¹⁸ Order No. 89226 at 10–11; OPC Initial Comments at 27.

¹⁹ Order No. 88944 at 11 (Case No. 9481, Dec. 11, 2018) (“The Commission has been consistent in its adherence to a traditional test year that bases new rates on actual, not projected, data.”).

²⁰ *E.g.*, *In the Matter of the Application of Delmarva Power & Light Company for Authority to Increase Its Charges for Electric Distribution Service*, Order No. 85029, 103 Md. P.S.C. 377 (2012).

²¹ Order No. 88944 at 11.

and conditions justifying a proposed investment or expense will remain unchanged throughout the duration of an MRP.

Given that “the true accuracy of forecasts cannot be determined until *after* the project has been completed,”²² relying on utility forecasts exposes customers to significant risk. Also, experience shows that utility cost forecasts are inaccurate far more often than they are not.²³ As Staff’s comments recognizes, “the long-sought arrangement where budgets and rates would reflect spending, at least on capital projects, based on each utility’s distribution service planning case has not evolved to the point where forecasted planning decisions reflect the costs incorporated into future rates.”²⁴

3. The opportunity to recover overspending through the reconciliation mechanism disincentivizes cost-containment.

The MRP reconciliation mechanism further exacerbates the problems with relying on advanced review of capital workplans and utility forecasting to set rates. The reconciliation mechanism enables utilities to recover costs that exceed projections. The mechanism is symmetrical. If a utility underspends, the difference between forecasted costs and actual costs is refunded to customers. But if a utility overspends, the utility recovers the overspending through the adjustment rider. If there were an equal likelihood of overspending and underspending, such a mechanism might be justified. Experience

²² Order No. 89868 at 94.

²³ See *infra* Table 1 (showing the differences between the spending levels approved for BGE and Pepco and the actual amounts each company ending up spending); see also AOB Initial Comments at 3 (“The experience to date, clearly demonstrates that utilities cannot be relied upon to forecast future costs by account and by capital project with reasonable accuracy, and thus, . . . there can be no confidence that necessary ratepayer protections from wasteful or unnecessary utility expenditures are maintained.”).

²⁴ Staff Comments at 10.

shows, however, that utilities rarely underspend.²⁵ Nor is there any incentive to do so: the opportunity to recover overspending discourages utilities from reducing their costs—in doing so, it effectively encourages overspending.²⁶

As explained in OPC’s comments, the opportunity to reconcile excessive costs harms customers. Managing costs within an approved revenue requirement, as utilities are incentivized to do under standard ratemaking, is beneficial to customers and utilities. Utilities that improve the cost-effectiveness of their operations and investments are rewarded with a higher earned return. And customers benefit from the utility’s improved cost-effectiveness over the longer term through lower rate increases.

But providing the opportunity to recover costs above that revenue requirement discourages utilities from containing costs, to customers’ detriment. Absent the opportunity for reconciliation, utilities adjust their capital budgets and projects 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. This problem is exemplified by BGE’s decision to complete its entire capital workplan—rather than reduce its spending on discretionary projects—even after experiencing higher than anticipated major storm costs in MRP 1 Rate Year 3.

²⁵ *E.g.*, Case No. 9692, BGE Exhibit 42A (Rebuttal Testimony of David M. Vahos) at 41, lines 3-10 (“[I]n almost all cases, the identified risks that would increase expenditures are more numerous, more likely, and more costly than the opportunities for savings.”).

²⁶ Case No. 9692, OPC Initial Br. at 11–12.

The opportunity for reconciliation functionally de-risks utility investments. Coupled with a narrow and “after-the-fact” prudence review, reconciliation shifts to customers the risks associated with cost-increases typical of large or complex projects that, historically, utilities would bear. This further encourages utilities to invest beyond what may be necessary to provide safe and reliable service or comply with state or Commission policy directives.

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

4. MRPs prevent the public from enjoying the cost-containment benefits that regulatory lag provides.

Enabling advanced recovery for infrastructure spending eliminates a fundamental constraint on utility capital spending—regulatory lag. Regulatory lag refers to the time difference between when costs are incurred, and costs are recovered. In a standard ratemaking construct, regulatory lag is a mechanism of constraint, as it forces a utility to wait until a subsequent rate case—and corresponding prudence review—before it can begin to recover costs related to capital investments.²⁷

²⁷ OPC Initial Comments at 17.

MRPs, however, significantly reduce the period of regulatory lag by enabling utilities to recover costs of new investments contemporaneously with their incurrence.²⁸ This accelerates the cost recovery period for capital investments. Given that there are few limits on the scope and corresponding costs of MRP workplans, reducing regulatory lag “increases the likelihood that utilities—logically pursuing their own private interests—will be over-aggressive in increasing capital expenditures beyond the point of cost-effectiveness.”²⁹

Regulatory lag incentivizes capital spending governance. Under standard ratemaking, utility profitability is largely driven by how well costs are controlled. As utility costs rise, the earned rate of return falls; as utility costs go down, the earned rate of return increases.³⁰ Regulatory lag rewards those utilities that control costs with the opportunity to earn a higher rate of return. As noted above, this incentive benefits *both utilities and customers*. Reducing the period of regulatory lag, on the other hand, lessens the financial reward for containing costs and reduces the penalty the utility faces for failing to control those costs. Thus, a utility operating under an MRP has no cannot use cost-containment as a strategy to boost profits—as any underspending will be returned to customers during reconciliation. As a result, MRPs prompt utilities to try different strategies to boost profitability, mainly through efforts to increase rate base to higher and higher levels.

²⁸ OPC Initial Comments at 17; *see* Order No. 89226 at 13.

²⁹ OPC Initial Comments at 17–18.

³⁰ Order No. 89226 at 19.

The four necessary components of Maryland’s MRP construct discussed above, both individually and collectively, underlie the perverse outcomes of MRP ratemaking—higher rates with few corresponding benefits. Each of these components is a requisite feature of MRPs. As OPC and other stakeholders’ comments have shown, these components result in a ratemaking construct that is not in the public interest and cannot produce just and reasonable rates.

B. Maryland customers are worse off under MRPs.

1. Excessive spending under MRPs drives up customer rates to unreasonable levels.

The outcomes of MRP ratemaking show how the MRP framework encourages—and rewards—excessive utility spending. On a percentage basis, BGE’s electric rates have increased by 26 percent since approval of its first MRP. Pepco’s rates have increased by 22 percent since its first MRP. And Delmarva’s rates have increased by 14 percent since approval of its first MRP. For each of the Exelon utilities, the average annual percentage rate increase under MRPs is at least 40 percent higher than the average annual rate increase under the rates approved through standard ratemaking from 2006–2020.³¹

The rate increases under MRPs are driven both by precipitous rate base growth and large increases in O&M expense. Even with the reductions to rate base the Commission ordered for BGE’s and Pepco’s first MRP, both utilities’ rate bases increased significantly: Pepco added \$675 million in electric plant; BGE added more than \$2

³¹ OPC Initial Comments at 11, Table 1.

billion in plant—\$1.3 billion for electric and \$1.1 billion for gas.³² Both BGE and Pepco’s actual capital spending in the first MRPs exceeded the company’s *proposed* MRP budgets that Commission orders *reduced*.³³ Utility O&M performance is not much better. While BGE’s MRP application included proposed gas and electric O&M budgets that would lower the company’s annual O&M spend compared to 2020, the company’s actual MRP spend was far higher—about \$70 million higher for electric and about \$50 million higher for gas.³⁴ Because of the opportunity for reconciliation, MRPs have led to BGE customers paying higher rates and unfairly compensating the company for overspending, rather than incentivizing the company to realize the O&M reductions in its application (which may have influenced the Commission’s decision to approve the forecasted budgets in the first place).³⁵

The table below compares BGE and Pepco’s requested revenue amounts for their first MRPs, the Commission’s authorized revenue requirements, and each companies’ actual revenue requirements inclusive of the RY1 and 2 authorized and requested reconciliation amounts for RY 3. Clearly, the Commission’s authorized MRP budgets had little influence on the utilities, as each utility’s actual revenue requirement exceeds its initial request to the Commission:

³² OPC Initial Comments at 6.

³³ OPC Initial Comments at 7–8.

³⁴ OPC Initial Comments at 7.

³⁵ OPC Initial Comments at 7.

Table 1: Cumulative MRP Revenue Requirements Over Three Years: Requested, Awarded, and Actual (millions of dollars)³⁶

	Rate Year 1			Rate Year 2			Rate Year 3		
	Requested	Awarded	Actual	Requested	Awarded	Actual	Requested	Awarded	Actual
BGE Electric	\$109	\$59.3	\$71.9	\$156.1	\$98	\$137	\$203.9	\$139.9	\$218.88
BGE Gas	\$65.9	\$53.24	\$60.51	\$76.2	\$64.01	\$78.52	\$109.7	\$73.88	\$147.21
Pepco	\$44	\$20.64	\$21.7	\$78.1	\$36.90	\$45.24	\$110.1	\$52.24	\$91.78

In Order No. 90948, the Commission emphasized that the budgets and spending it approves “are not aspirational,” adding that “[t]he Commission expects utilities to manage their operations and spending within the limits the Commission has approved.”³⁷ Yet the results of MRPs show that the approved budgets meant very little. BGE’s MRP 1 Rate Year 3 reconciliation exemplifies this point, where the company has proposed to recover an additional \$78 million from electric customers through its MYP adjustment rider. There, the company identified nearly \$120 million in spending related to “uncontrollable items over which BGE has little ability to forecast.”³⁸ Yet, rather than

³⁶ The “actual” revenue requirement adds the reconciliation revenue requirements authorized for MRP 1 Rate Years 1 and 2 in Case Nos. 9692 and 9702 and the reconciliation revenue requirements BGE and Pepco have requested for MRP 1 Rate Year 3 to the awarded revenue requirements for each MRP 1 rate year. Information sourced from: Case No. 9645, Vahos Direct at 2 (BGE Electric and gas requested revenue requirement); Case No. 9655, Wolverton Direct at 3 (Pepco requested revenue requirement); BGE Electric and Gas Order No. 89678, Appendix A (BGE Electric and Gas authorized revenue requirement); Order No. 89868, Appendix A (Pepco authorized revenue requirement); Order 89678, Appendix C, Appendix D (BGE RY 1 and 2 reconciliation); Case No. 9645/9692, ML# 309241 Frain Direct, Attachment 1-E, Attachment 1-G (BGE RY 3 requested reconciliation); Order No. 91181 at 120 (Pepco RY 1 and 2 authorized reconciliation); Case No. 9655/9702, ML# 311238, Leming Direct, Schedule (RTL)-1 (Pepco RY 3 requested reconciliation).

³⁷ Order No. 90948 at 4.

³⁸ Case No. 9645/9692, BGE Ex. 6-FR, Frain Direct at 7:6-10 and Schedule JCF-1.

adjust its planned capital expenditures to offset the increased spend on “uncontrollable items,” the company chose to “[catch] up actual spending to planned spending” and “essentially completed the workplan for the entire 2012-2023 [MRP] period.”³⁹

Experience shows that utilities treat their awarded MRP budgets as a total pool of money. The utilities have a perverse incentive to “manage” budgets by making sure they spend at least those budgets—otherwise they would have to issue credits to customers in a future reconciliation proceeding. For instance, as OPC pointed out in Case No. 9702, Pepco manages its O&M spending at the total O&M level. Since the company adjusts spending up or down for different expense categories to meet the targeted overall expenditures, cost reductions in one area never lead to a net reduction in O&M costs because Pepco seeks to spend its entire budgeted amounts—cost reductions in one area are used to increase the amounts budgeted in another.⁴⁰

Indeed, given that the Commission has repeatedly affirmed a utility’s ability to “self-govern its capital programs and projects,” utilities are incentivized to spend at least as much as they have budgeted “with little regard to: (1) the composition of the projects or activities on which dollars are actually spent; or (2) the productivity of the projects or activities for which dollars are expended from a ratepayer perspective.”⁴¹

With reduced consumer protections and a lack of any real incentive to ensure cost-effectiveness, it is unsurprising that awarding utilities large budgets and unfettered

³⁹ Case No. 9645/9692, BGE Ex. 6-FR, Frain Direct at 8:9-11.

⁴⁰ Case No. 9702, ML# 308837, OPC Initial Br. at 43.

⁴¹ Case No. 9702, AOBA Exhibit 13 (Surrebuttal Testimony of Bruce R. Oliver) at 5:16 – 6:3.

discretion in how to execute them has resulted in unreasonably high rates for Maryland customers.

Distribution rates for the three Maryland utilities operating under Multi-Year Rate Plans (MRPs)—commonly known as the Exelon companies—have reached record levels, saddling customers with significant financial burdens. Average annual rate increases for these utilities now exceed 6 percent.⁴² For BGE customers, the impact is particularly stark: by 2024, a typical electric customer consuming 900 kWh monthly will pay \$145 more per year for distribution service than they did in 2020.⁴³ Similarly, BGE gas customers will see their annual distribution costs rise by more than \$250 during this period.

The trend is no less severe for customers of the other Exelon utilities. Pepco customers have experienced an annual increase of \$172 in distribution charges after just three years under an MRP.⁴⁴ Meanwhile, Delmarva customers, two years into the company's MRP, now pay \$97 more annually for distribution services.⁴⁵ Together, these increases highlight the financial strain placed on customers across all three Exelon companies.

⁴² See OPC Initial Comments, Appendix A, Office of People's Counsel, *Maryland's Utility Rates and Charges* (Aug. 2024).

⁴³ See OPC Initial Comments, Appendix A at 49 (electricity) and 48 (gas) (Aug. 2024).

⁴⁴ *Id.* at 70.

⁴⁵ *Id.* at 63.

2. Customers have not benefited from improved MRP transparency.

In theory, affording stakeholders an opportunity for advance review of planned utility spending should increase the transparency of a utility's decision-making. Yet, in practice, MRPs only make utility planning slightly less opaque. The transparency benefits claimed by the utilities are largely illusory and have certainly not provided enough of a benefit to outweigh the detrimental customer impacts of MRP ratemaking for two reasons.

First, the transparency that MRPs afford has not proven to be meaningful. The Exelon companies claim MRPs encourage meaningful discussion between stakeholders and utilities and afford “greater insight, understanding, and oversight into utilities capital investment and spending plans.”⁴⁶ But this rosy portrayal of MRPs as a collaborative process is belied by actual MRP results. Both BGE and Pepco's reconciliations of their first MRPs show significant and material deviations from the proposed workplans that utilities provided to stakeholders in the initial base rate case. While significant changes to MRP workplans may be identified in the required rate year project list filings, there is no established formal process for stakeholders to recommend, for the utilities to address those recommendations—and the Commission to order—changes to proposed project lists.⁴⁷

⁴⁶ BGE Initial Comments at 8–13; PHI Initial Comments 13.

⁴⁷ Unlike project lists proposed pursuant to the Strategic Infrastructure Development and Enhancement (“STRIDE”) law, Commission approval is not required before a utility can begin to executive an MRP annual project list.

Moreover, the information utilities provide to justify their planned capital and O&M spending is heavily curated and often insufficient. Expensive projects and programs are typically explained and justified in only a few short sentences, with minimal discussion of project alternatives.⁴⁸ Project benefits are rarely quantified, requiring stakeholders to engage in significant effort and follow-up discovery to determine the value to customers of a utility's investment plans.⁴⁹ As AOBA's initial comments explain, "[t]ransparency does not lie in the explanations of the processes for approving projects[,] but in the public presentation of actual supporting data and analyses."⁵⁰ Despite utilities' adherence to the Commission's minimum filing requirements for MRPs, stakeholders in each MRP proceeding to date have found a general absence of such supporting data and analyses.⁵¹

Second, the required MRP filings require significant effort by stakeholders to determine what customers are actually paying for. MRP base rates are based on projects a utility forecasts it *may* complete, with expected in-service dates scattered throughout the capital work plans. Stakeholders must engage in significant effort just to understand what costs are reflected in the company's proposed base rates for each year.⁵² And reconciliation filings, by focusing on capital spending variances for all projects rather

⁴⁸ OPC Reply Comments at 8–9. For instance, BGE's MRP 2 application included a more than \$25 million project to rebuild the Finksburg Substation. Case No. 9692, BGE Ex. 31, Apte Direct, Exhibit AA-1 at 14–15 (Projects 80920, and 82332). The only information and justification the company's workplan provides is that "[t]he Finksburg 34kV Substation is an aging infrastructure, not designed to current standards, and loading is almost at the station's firm capacity." *Id.*

⁴⁹ OPC Reply Comments at 9–10.

⁵⁰ AOBA Initial Comments at 11 (emphasis omitted).

⁵¹ OPC Initial Comments at 26–27.

⁵² OPC Reply Comments at 10.

than the costs of projects that were placed into service, obscures the costs to customers—and prudence—of utility capital spending during the MRP.⁵³ Stakeholders may know how much capital a utility is approved to spend, as well as how much it actually spends during its MRP. But it is a significant challenge for stakeholders to identify precisely what project costs are reflected in MRP base rates and the reconciliation rider. In turn, evaluating the costs for prudence is resource-intensive and challenging, making it more likely that customer bear the costs of imprudent spending.

3. The burdens of MRPs impede effective participation by non-utility stakeholders.

Non-utility stakeholders in MRP proceedings generally agree that MRPs have failed to decrease administrative burdens. Commission Staff concludes that “the administrative burdens compared with standard ratemaking have not been eased through the MRP format.”⁵⁴ AOBA concludes that “MRPs require substantially greater effort on the part of the Commission, its Staff, OPC, and other intervenors”⁵⁵

As OPC’s initial comments explain, “MRP litigation is far more resource-intensive than litigating a standard rate case.”⁵⁶ The sheer size and scope of proposed utility capital plans—and the volume of information required to sufficiently review them—impose significant burdens on stakeholders seeking to effectively participate. Considering that MRP base rate cases necessarily include a reconciliation of the first two rate years of the

⁵³ OPC Reply Comments at 10-11.

⁵⁴ Staff Comments at 8.

⁵⁵ AOBA Comments at 8.

⁵⁶ OPC Initial Comments at 21.

prior MRP, resource-limited stakeholders, such as OPC, are forced to apply their limited resources to concurrently review five different years of actual and proposed capital spending. The challenges increase the likelihood that imprudent or excessive spending may not be identified by stakeholders and brought to the Commission's attention.

Moreover, MRPs impose ongoing obligations of stakeholders beyond participating in the base rate case. Staff's initial comments correctly detail the continuing obligations MRPs require—reviewing proposed project lists and annual informational filings; multiple reconciliation and prudence review proceedings both during and subsequent to an MRP rate case; and cumbersome discovery to obtain critical information not included in an initial MRP filing, project lists, informational filings, and reconciliations.⁵⁷ While MRP compliance filings provide a certain level of oversight, in practice they are insufficient to allow the Commission to effectively monitor, review, or regulate the company's execution of its MRP.⁵⁸

Ultimately, MRP transparency is largely undermined by the significant informational asymmetries that must be overcome for meaningful and effective stakeholder participation. Each utility also has its own distribution system planning process and capabilities, requiring stakeholders to first develop a basic familiarity through discovery with the utility's current planning process⁵⁹ before assessing whether

⁵⁷ Staff Initial Comments at 9–10.

⁵⁸ OPC Reply Comments at 18.

⁵⁹ This will require stakeholders to continue to familiarize themselves with these processes as they change. Each utilities' distribution system planning process is likely to undergo significant changes over the next decade or more as efforts to modernize those processes unfolds through the regulatory reform underway in the Commission's Distribution System Planning Work Group in Public Conference 44.

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 review of proposed and actual spending in the compressed timeframe of an MRP case.

The complexity of MRP rate cases, and the continuing obligations MRP require, necessarily frustrates the ability of stakeholders to effectively and robustly engage with MRP ratemaking compared to standard ratemaking. Even if MRPs reduce the number of rate cases that are filed, experience shows that MRPs have increased rather than decreased administrative burdens.

II. MRPs have not advanced state policy goals and cannot do so cost-effectively, even if the MRP construct is reformed.

A. The use of MRPs has not advanced any State policy goals to date.

It is Maryland policy that the electric system support, “in a cost-effective manner,” (1) the reduction of greenhouse gas emissions, (2) generation from renewable energy sources, (3) the reduction of Maryland's dependence on electricity imported from other states, and (4) the resiliency, efficiency, and reliability of the State's energy system.⁶⁰ PUA § 7-802 supplements these electric system policy goals with a longer, more detailed

⁶⁰ PUA § 7-801.

list of goals for purposes of Commission reporting to the General Assembly.⁶¹ Other sections of the PUA state or imply additional policy goals.⁶²

There is no basis to find that MRPs in Maryland have appreciably advanced the achievement of any of these State policy goals.⁶³ Staff reached essentially the same conclusion, commenting that it was “unclear” whether the MRP model has advanced State policy goals while presenting no argument that it had.⁶⁴ Similarly, Constellation Energy Generation, LLC observed “a significant gap between anticipated and realized outcomes when aligning utility investments with state goals.”⁶⁵

Only the Exelon companies—who stand to profit from the increased capital investment facilitated by MRPs—claim that MRPs have helped advance State policy. Yet the Exelon companies have offered, at best, only conclusory statements to support their assertions. BGE states it has “leveraged the MYP pilot to partner with the Commission and stakeholders to achieve the State’s policy objectives.”⁶⁶ But the company provided no factual support for this statement. When asked by Commissioner Richard at the October 15 hearing to provide an example of why “the MYP is a good model for state

⁶¹ See PUA § 7-802. These goals include, *inter alia*, giving priority to vulnerable communities in the development of distributed energy resources and electric vehicle infrastructure; incorporation of energy storage technology as appropriate and prudent to support electric system efficiency and reliability and provide additional capacity for distributed renewable energy resources; and demand response and other nonwire and noncapital alternatives.

⁶² For example, PUA § 7-216.1 establishes an explicit goal of 3,000 megawatts of cost-effective energy storage in Maryland by 2033. While PUA § 7-217, by authorizing electric school bus pilot programs that meet certain conditions, including the use of vehicle-to-grid (“V2G”) technology, implicitly establishes a state policy goal of helping to finance the transition to electric school buses through electricity rates while advancing V2G in Maryland.

⁶³ See OPC Initial Comments at 13-16; *see also* OPC Reply Comments at 15-17.

⁶⁴ Staff Initial Comments at 4.

⁶⁵ Constellation Initial Comments at 2.

⁶⁶ BGE Initial Comments at 2.

policies,”⁶⁷ BGE representative Mark Case could only state that BGE’s MRP “is just filled with programs and projects and initiatives that are designed to align with state policy objectives.”⁶⁸ And the 18 “projects” BGE identifies in its October 15 presentation slides—i.e., “Transition of the Gas Business,” “Physical and Cyber Security,” “Modernized Customer Systems—are little more than broad capital investment categories.⁶⁹ In short, BGE does not and cannot identify *any* specific project to advance State policy that MRPs enabled the company to pursue.

Pepco and Delmarva, for their part, have suggested that MRPs have indirectly helped advance State policy by reducing the litigation burdens of rate cases and thereby enabling the utilities and other stakeholders to dedicate more time to policy-focused Commission dockets.⁷⁰ But even this attenuated claim is belied by the consensus among the non-Exelon-utility parties that have engaged heavily in MRPs. As Staff, AOBA, and OPC’s comments demonstrate, MRPs *increase* administrative burdens, compared to standard rate cases—thus limiting the resources available for the stakeholders to participate in policy dockets.⁷¹

⁶⁷ Tr. at 74:4-10.

⁶⁸ Tr. at 74:11-14.

⁶⁹ BGE Presentation Slides at 5.

⁷⁰ PHI Reply Comments at 20. PHI specifically cites PC 44 and PCs 53-65.

⁷¹ See Staff Initial Comments at 8-10, OPC Initial Comments at 21-24, AOBA Initial Comments at 8-10.

B. The Exelon utilities have failed to show that MRPs can advance State policy any more effectively than standard rate cases can.

In the absence of evidence showing that MRPs have actually advanced State policy goals, the Exelon utilities theorize that MRPs have a unique capacity to enable the advancement of State policy in the future.⁷² This theory is more rhetoric than argument, however.⁷³ Essentially the Exelon utilities' argument appears to be that the large-scale electrification that Maryland needs to achieve its greenhouse gas reduction targets requires utilities to make rapid and massive new investments in their distribution systems, and that MRPs are the only way for the utilities to ensure that those investments are aligned with and can “keep pace” with state policy.⁷⁴ These claims, however, are unsubstantiated and unpersuasive.

First, the idea that MRPs might help Maryland achieve its climate goals is more of an *ex post facto* rationalization for MRPs than it was a motive for their adoption in 2019. As OPC's initial comments note, while there was extensive discussion in PC 51 about the possibility that performance-based ratemaking (“PBR”) might advance State policies, there does not appear to have been any expectation that non-PBR forms of alternative ratemaking such as MRPs should do so.⁷⁵ The advancement of State policy is

⁷² See, e.g., BGE Initial Comments at 13-15 and PHI Initial Comments at 5-6. See also Tr. at 23:13-16, 39:17-21.

⁷³ See, e.g., BGE Reply Comments at 2 (“We’re trying to move to a 21st century grid with 19th century rules.”) Tr. 23:6-9 (“You know, the analogy for me is driving a car. Would you spend all your time looking in the rearview mirror or would you want to be looking forward to what’s ahead?”).

⁷⁴ See, e.g., PHI Utilities Initial Comments at 1-2 (“...in the absence of the forecasted recovery provided by MYPs, the Companies would have to file more frequent [historic test year cases] in order to keep pace with the additional investments necessitated by state policy goals and to implement forward-looking innovative new projects....”). See also Tr. 23:13-15 (“Utilities are able to make investments that are aligned to the state policy goals and priorities...”).

⁷⁵ See OPC Initial Comments at 15.

conspicuously absent from the Commission’s list of hoped-for MRP benefits in Order No. 89226.⁷⁶

Second, notwithstanding the Exelon utilities’ suggestion that they will file “pancaked” rate cases if the Commission revokes its authorization for utilities to file MRPs,⁷⁷ MRPs are not necessary for utility investments either to “keep pace” with or to be aligned with State policy. While achieving the greenhouse gas reductions required by the CSNA requires the large-scale electrification of Maryland’s building and transportation sectors, the distribution systems of the State’s electric utilities currently have more than enough headroom to accommodate the electrification needed for Maryland to achieve the CSNA’s 2030 decarbonization target.⁷⁸ Despite what the Exelon utilities claim, State policy is not currently driving the increasing pace of electric distribution system investments.

More importantly, even if there were a need for rapid new distribution system investments, the Exelon utilities have failed to show that standard ratemaking is inadequate to finance and support the execution of such investments. During the 1980s,

⁷⁶ See Order No. 89226 at 54.

⁷⁷ See, e.g., BGE representative John Frain’s statement at Tr. 310:14-311:1 (... single year rate cases ...[leave] us as being in the position of needing to file pancaked rate cases.... Go through a 10 month proceeding. Sixty days later, we’re filing the next one.”)

⁷⁸ Brattle Group (prepared for Maryland Public Service Commission), *An Assessment of the Electrification Impacts on the Maryland Grid* at 28 (“[T]he results show that deploying a portfolio of energy efficiency and load flexibility measures can lead to significant mitigation of load growth, even with high electrification. This combination of factors suggests that the transition to a highly electrified building sector in Maryland is manageable through 2031.”), <https://www.psc.state.md.us/wp-content/uploads/Corrected-MDPSC-Electrification-Study-Report-2.pdf>; Office of People’s Counsel, *Electrification in Maryland: Understanding Headroom*, (Jan. 2023),

Maryland’s electric utilities kept pace with relatively rapid load growth⁷⁹ under standard ratemaking. The Exelon utilities claim they cannot do so now but fail to provide a coherent explanation for the inadequacy of standard ratemaking. Meanwhile, Maryland’s other electric utilities appear to be keeping pace with standard ratemaking, as neither Potomac Edison nor SMECO has filed an MRP to date.

The Exelon utilities’ claim that MRPs are needed for the Commission to review prospective utility investments for alignment with State policy also fails to withstand scrutiny. Under standard ratemaking, nothing prevents the Commission from requiring utilities to submit investment plans for review and approval *outside of rate cases*. The Commission could easily prescribe such a requirement now in its distribution system planning docket. Then, the degree to which utilities have followed through on their plans—or justified any deviations from them—could be an element of prudence review in the utility’s next rate case.

Third, in practice, MRPs have proven to be a wholly unsuitable forum for new policy proposals, such as the electrification plans that BGE and Pepco proposed in their most recent rate cases. As the Commission stated in striking BGE’s proposed electrification plan, “it is prudent and consistent with past precedent for the Commission to consider major new policy proposals in a separate docket rather than a base rate case, where the parties and the Commission are required to address a multitude of issues in a

⁷⁹ *See id.* at 1 (“Historically, there was significant Maryland system load growth in the 1980s of 4.9% per year and more moderate growth of 1.2-1.5% from 1990-2019, while load declined between 2010-2020. [The result of this analysis] show that peak load growth through 2031 with high electrification of the building sector will be comparable to or less than the growth rate the Maryland system has seen over the last 40 years.”).

constrained time frame.”⁸⁰ On the other hand, no party to this lessons learned proceeding disputes⁸¹ that the Commission’s various policy dockets have been an effective means for advancing both policy goals established by the General Assembly—such as the Maryland Energy Storage Program—and policies initiated by the Commission—such as the electric vehicle pilot program).⁸²

In their reply comments and at the hearing, the Exelon utilities attempted to support their argument that the achievement of State climate policy goals necessitates MRPs by claiming that eight of the ten states with the most ambitious climate goals in the U.S. use MRPs,⁸³ with the implication that these states have adopted MRPs *for the purpose* of advancing climate goals. But the correlation between MRPs and strong state climate policy is weak, and there is no evidence in the record that any state has adopted MRPs to further its climate goals.

According to NARUC, thirteen states other than Maryland currently implement MRPs.⁸⁴ Of these, ten—Hawaii, Washington, California, Nevada, Minnesota, Illinois,

⁸⁰ Case No. 9692, Order No. 90755 at 9–10.

⁸¹ This is not to say that any party, including OPC, always agrees with the outcomes of the Commission’s policy dockets.

⁸² Staff and MEA both agree that MRPs are an inappropriate venue for making new policy and that the Commission’s policy dockets are appropriate venues. *See, e.g.*, Tr. 251:19-253:12 (colloquy between Commissioner Suchman and Staff representative Drew McAuliffe) and Tr. 175:15-176:15 (testimony of MEA representative Joyce Lombardi).

⁸³ *See* Tr. 30:4-9.

⁸⁴ *See* NARUC Performance-Based Regulation State Tracking Map at <https://www.naruc.org/core-sectors/energy-resources-and-the-environment/valuation-and-ratemaking/performance-based-regulation-state-tracking-map/>. *See also* NARUC PBR State Working Group, *Tracking State Developments of Performance-Based Regulation* at <https://pubs.naruc.org/pub/D60DDEC2-A9AF-BB16-C824-86A5C2B2A13F>. It should be noted that observers reach different conclusions regarding which states use MRPs and which do not. Mark Newton Lowry of Pacific Economics Group identifies a rather different group of states as having MRPs—and remarkably does not include Maryland among them due to

Vermont, Connecticut, Massachusetts, and Rhode Island—have ambitious climate policies,⁸⁵ while two—Arizona and Georgia—have no greenhouse gas emissions reduction targets or meaningful climate policy at all.⁸⁶ On the other hand, at least two of the states with the nation’s most ambitious climate policies—Colorado and Oregon⁸⁷—do not currently use MRPs.

Moreover, even if there was a clear correlation between the adoption of MRPs and the adoption of strong climate policies, that does not mean that MRPs are necessary to advance those policies. In fact, there is no evidence that any state has adopted MRPs in order to advance its climate objectives—or any other policy objectives, for that matter. The Exelon utilities’ argument is a classic example of the fallacy that correlation implies causation—the evidence to date demonstrates that the achievement of policy objectives does not depend on the use of MRPs.

Maryland’s reconciliation mechanism. See Mark Newton Lowry, Ph.D., *Performance-Based Ratemaking: Multiyear Rate Plans and Performance Based Mechanisms* (2022), at 13, *available at* <https://www.nasuca.org/wp-content/uploads/2021/10/Lowry-Presentation-for-NASUCA-Final.pdf>. Lowry comments: “Regulatory systems in some states are called MRPs but act more like formula rates due to fine-print ‘reconciliation mechanisms’ (e.g., IL, MD, DC).” BGE’s slide presentation to the Commission at the hearing in this matter—for which BGE provided no citation or attribution—showed yet another group of states as using MRPs. See ML# 313007 at 7.

⁸⁵ OPC bases its assessment of the MRP states’ climate policies on online tools that the Center for Climate and Energy Solutions (“C2ES”) and Climate XChange have developed to enable users to evaluate and compare states’ climate policies. See <https://www.c2es.org/content/state-climate-policy/> (C2ES) and <https://www.climatepolicydashboard.org/> (Climate XChange).

⁸⁶ *Id.*

⁸⁷ *Id.*

C. Even if the MRP construct is reformed to improve alignment with State policy goals, MRPs cannot advance State policy cost-effectively.

Maryland law requires the electric distribution system to support, in a *cost-effective* manner, State goals to reduce greenhouse gas emissions, increase renewable energy generation, decrease dependence on electricity imports, and improve energy system reliability, resiliency, and efficiency.⁸⁸ Given the inherent flaws of Maryland's MRP construct discussed above, it is difficult to conceive how MRPs could cost-effectively advance State policy.⁸⁹ MRPs will continue to encourage unnecessary increases in capital spending; they will continue to discourage cost-effectiveness and they will continue shift the risk of utility inefficiency and imprudence from utilities to customers in derogation of the public interest.

As the General Assembly increasingly seeks to finance climate-related investments through utility rates, it is critical for the Commission to ensure that its ratemaking processes do not unnecessarily add to customer burdens. Ending the MRP pilot is an essential step in mitigating the cost of Maryland's energy transition, especially for low- and moderate-income customers.

⁸⁸ PUA § 7-801.

⁸⁹ If the Commission should decide to retain the MRP construct despite OPC's recommendations to the contrary, both MEA and OPC support reforms that would ensure utility MRP proposals are consistent with robust and transparent DSP efforts overseen by the Commission. *See* Tr. 175:9-176:9, 185:18-187:6 (MEA) and Tr. 227:4-10 (OPC).

III. The reforms that the Exelon utilities and other stakeholders have proposed to Maryland’s MRP construct cannot align it with the public interest.

MEA, the Exelon companies, and Staff have proposed or expressed support for reforms to the established MRP construct to mitigate the impacts of excessive utility spending. The potential effectiveness of these reforms is limited, however, because none of them would fix the fundamental flaws in Maryland’s MRP construct that drive overspending in the first place.

MEA states that MRPs have failed to deliver on their intended benefits and recommends that the Commission “at a minimum” consider a percentage cap on the recovery of spending variances, should it decide to continue to allow MRPs.⁹⁰

The Exelon companies criticize the cap approach (which was originally floated by Staff witnesses in Case No. 9645⁹¹) as not providing utilities an incentive to “achieve efficiencies,”⁹² and instead recommend, as a check on overspending, an “earnings sharing mechanism” that would replace the current reconciliation process. Under the Exelon proposal,⁹³ if a utility’s actual rate of return (“ROR”) following an MRP period exceeds its authorized ROR by more than 25 basis points, half of *some* of the utility’s over-recovery would be returned to customers. The Exelon companies would exclude from the pool of money subject to sharing “certain defined items that are largely outside of a utility’s control, such as expenditures for storms, new business, new or changed

⁹⁰ MEA Initial Comments at 2, 3, 6.

⁹¹ *See, e.g.*, Direct Testimony of David L. Valcarengi at 5, lines 6-8.

⁹² Tr. 341:5-8.

⁹³ *See* BGE Reply Comments at 25-30.

regulatory/legislative requirements, and any other items the Commission determines should be excluded” from the mechanism.⁹⁴ Under the Exelon proposal, if a utility’s actual ROR exceeds its authorized ROR by less than 25 basis points, there would be no sharing.⁹⁵

At the hearing in this matter, Staff expressed potential support for either a cap on the recovery of variance spending or an earnings sharing mechanism, as well as support for “enhanced filing requirements” to support parties’ ability to review MRP spending.⁹⁶

While OPC appreciates the spirit of these recommendations, neither a cap on the recovery of variance spending nor an earnings sharing mechanism would align with the public interest. Nor will piling additional meetings and data on stakeholders.

A stringent cap on the recovery of variances may disincentivize overspending to some extent, and a cap has the appeal of simplicity and relative ease of administration. But as OPC discussed at the hearing, a utility facing a cap on over-recovery has a potential work-around: it can simply propose more spending in its MRP plan in the first place, with the expectation that the Commission will allow the spending in base rates.

⁹⁴ BGE Reply Comments. at 27.

⁹⁵ Under Exelon’s proposal, if a utility’s actual ROR falls short of its authorized ROR by more than 25 basis points, the utility could recover half of the amount that would be necessary for the utility to achieve its authorized ROR. *See* BGE Initial Comments at 29-30. The Exelon utilities also propose more meetings between utilities and stakeholders, more data provided in the compliance filings, and more information regarding changes to capital workplans. *See* ML# 313007, BGE, Presentation Slides from October 15, 2024 Hearing (“BGE Presentation Slides”) at 7–8; ML# 313005, Pepco, Presentation from October 15, 2024 Hearing (“PHI Presentation Slides”) at 8–9.

⁹⁶ Tr. 239:3-7.

The more spending the Commission allows, the less the need for the utility to exceed its allowed spending level and risk running up against the cap.⁹⁷

With respect to the Exelon earnings sharing mechanism proposal, the amount of overspending that would be excluded from the mechanism as beyond the utility's control, "exogenous," or otherwise determined to be inappropriate for inclusion would likely be so great that whatever revenue is subject to sharing would almost certainly fall within the no-share "deadband" zone.⁹⁸ Thus, notwithstanding the Exelon utilities' claim that an earnings sharing mechanism would incentivize utilities to operate more efficiently, it would do little to disincentivize overspending.

And it would do nothing to correct the flaws in the MRP construct that underlie excessive utility investment plans. Utilities would remain just as free to propose extensive project lists to justify large capital spending increases as they would in the existing MRP structure. And utilities would also retain their ability to reprioritize capital and O&M spending to ensure that they at least spend the entirety of their authorized budgets. Moreover, customers would still bear the risk of inaccurate utility cost forecasting. Even if the earnings sharing mechanism *could* lead to better cost containment, the MRP construct would still encourage utilities to spend more than required to provide safe and reliable service.

The MRP construct's structural defects are so extensive that there are no reforms or fixes that can align MRP ratemaking with the public interest. If the Commission plans

⁹⁷ See Tr. 350:20-23.

⁹⁸ Chairman Hoover expressed this concern at the hearing. See Tr. at 96:4-97:6.

to retain MRPs in some form despite this reality, extensive additional stakeholder discussion—including a comprehensive and exhaustive review of the MRP construct—is necessary.

IV. The Commission should terminate the MRP pilot and sunset the current MRP construct.

PUA §§ 4-102 and 4-201 require the Commission to set rates and public service companies to charge rates that are “just and reasonable.” The Commission’s authority to adopt alternative forms of ratemaking requires it to determine that the alternative form of ratemaking “protects consumers” and be “in the interest of the public”.⁹⁹

The record and comments of this lessons-learned proceeding show that MRPs are inconsistent with the public interest and do not result in rates that are just and reasonable. OPC, Staff, MEA, AOBA, and Constellation—and other public commenters—have each submitted comments that detail the problems inherent in the MRP construct. OPC and AOBA’s comments, in particular, provide numerous illustrations and data showing how MRPs increase customer costs while delivering few benefits and that MRPs have not delivered on the intended outcomes of the Commission’s pilot.

On the other hand, the Exelon Utilities provide thin evidence that MRPs benefit anyone other than utility shareholders or that they truly consider the rate burdens MRPs have imposed on their customers. BGE, for example, apparently cannot even calculate this burden accurately, as it erroneously claimed to the public that average bills in 2024

⁹⁹ PUA § 7-505(c)(2)(i) and (iii).

are lower than in 2008.¹⁰⁰ Rates in 2024 are not lower than in 2004, but are in fact three times higher, and, except for when commodity prices spiked in 2008, customer bills over that period are all higher too.¹⁰¹ But even if the utilities correctly calculate these rate burdens, they do not have any incentive under MRPs to moderate how much rates will continue to increase.

The outcomes of BGE and Pepco's first MRPs, the lengthy testimony filed by OPC and AOBA in Case Nos. 9692 and 9702, as well as the vast majority of stakeholder comments filed in this lessons-learned proceeding show that the MRP construct does not align with the public interest and does not yield just and reasonable rates. Accordingly, pursuant to PUA §§ 4-101, 4-201, and 7-505(c)(2), this Commission should deny any future applications for new multi-year rate plan proposals.

As for BGE's existing multi-year rate plans, the Commission should invoke the off-ramp provision. Order No. 89482 required the pilot MRP to include an "'off-ramp' in the event of extraordinary circumstances outside the control of the utility that call into question whether the existing rates are just and reasonable. Such situations include, but are not limited to: changes in law, natural disasters, cyber or terror attacks, major economic events, or circumstances that would warrant the Commission's intervention to modify or terminate the MRP."¹⁰² In its order on BGE's second MRP, the Commission

¹⁰⁰ BGE Presentation Slides at 4.

¹⁰¹ OPC's recent report on Maryland utility rates shows the actual increase in rate burdens over that period in considerable detail. See OPC Initial Comments, Appendix A, Office of People's Counsel, *Maryland's Utility Rates and Charges* (Aug. 2024).

¹⁰² Order No. 89482 at 30.

stated that it “may consider invocation of the off-ramp provision” based “on the results of the lessons-learned proceeding.”¹⁰³

BGE’s initial MRP proposed an off-ramp provision “through which any party, including the Commission on its own motion, may file a petition to re-open and review the Company’s [MRP] if there is sufficient evidence that there is an issue that cannot be resolved through another avenue available under the [MRP].”¹⁰⁴ Under BGE’s off-ramp, the party petitioning for the off-ramp is required to present a “recommended proposal, timeline, and procedural schedule.”¹⁰⁵

OPC proposed a just and reasonable offramp approach to sunset BGE and Pepco’s first MRPs in Case Nos. 9692 and 9702. Under that approach, OPC witness David J. Effron approximated a partially projected test-year revenue requirement that reflected BGE’s net-plant-in service as of the end of the first MRP and projected O&M spending for Rate Year 1 of BGE’s second MRP.¹⁰⁶ The Commission could adopt this approach to off-ramp BGE’s second MRP by setting a new rate for Rate Year 3 based on BGE’s projected Rate Year 2 net plant-in-service balance and BGE’s projected Rate Year 3 O&M spending. That new rate would become the stated rate effective as of January 1, 2026 and would not be subject to reconciliation.

¹⁰³ Order No. 90948 at 12.

¹⁰⁴ Case No. 9645, BGE Ex. 4 Case Direct at 23:1-6.

¹⁰⁵ *Id.* at 23:11-13.

¹⁰⁶ Case No. 9692, OPC Initial Br. at 72–73.

For Delmarva, the Commission could allow the utility's Rate Year 3 rate to go into effect on January 1, 2025 as authorized in Order No. 90445, but should refuse to approve a subsequent MRP for Delmarva.

CONCLUSION

Customers should not be forced to pay excessive utility rates that have been set using a flawed ratemaking construct producing few, if any, tangible benefits while making rate cases more burdensome to litigate and preventing regulatory lag from efficiently guiding utility behavior without a massive commitment of resources from the Commission and other stakeholders. Stakeholder comments and testimony in this proceeding show that the MRP construct does not operate in the public interest. Any adjustments short of a complete and major overhaul are not enough to align the outcomes of MRP ratemaking with the public interest. The Commission can and should terminate the MRP pilot and sunset MRP ratemaking for the indefinite future.

[Continued for signatures]

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December 13, 2024

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of December 2024, the foregoing Brief of the Maryland Office of People's Counsel was e-mailed to all of the parties of record to this proceeding.

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