

**BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION**

DRIVE Act Implementation

Demand Side Management Programs, Rate Design
Measures, and Distributed Energy Resource
Integration in Coordination with the DRIVE Act

Case No. 9761

Administrative Docket
PC77

COMMENTS OF THE OFFICE OF PEOPLE'S COUNSEL

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April 1, 2026

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INTRODUCTION

The investor-owned utilities ask the Public Service Commission to allow them to take existing EmPOWER¹ demand response programs and move them into the DRIVE² pilot program. Maryland statutes do not permit that result based on the filings now before the Commission, and the Commission should not approve it.

EmPOWER and DRIVE are related statutes, but they do not do the same work. EmPOWER requires electric companies to develop and implement greenhouse gas reduction (“GHG”) plans that include demand response.³ The DRIVE Act, by contrast, creates a separate framework for pilot programs and temporary tariffs for electric distribution system support services, with any later transition to a permanent program left to a separate public-interest determination.⁴ Nothing in the DRIVE Act authorizes the Commission to remove existing demand response from EmPOWER and redesignate it as DRIVE pilot activity. When the General Assembly chose to create overlap between the two statutes, it did so expressly by allowing the Commission to permit energy generated by a renewable on-site generating system participating in a DRIVE pilot to count toward an investor-owned utility’s EmPOWER greenhouse gas reduction goals.⁵ It did not create the broader transfer mechanism the utilities now propose—and doing so could result in

¹ The EmPOWER Maryland Program, as amended by House Bill 864 during the 2024 Regular Session, is codified at Md. Code Ann., Pub. Util. §§ 7-220 to -228.

² The Distributed Renewable Integration and Vehicle Electrification (“DRIVE”) Act, enacted as Chapter 476 of the 2024 Laws of Maryland (House Bill 1256), is codified at Md. Code Ann., Pub. Util. §§ 7-1001 to -1007.

³ Md. Code Ann., Public Utilities Art. (“PUA”) § 7-223(a).

⁴ PUA § 7-1005.

⁵ PUA § 7-1005(e)(1).

utilities rate-basing costs they are currently required to expense under EmPOWER, thereby driving up customer bills with no associated benefit.

The utilities' proposal is also a poor fit for the pilot structure the General Assembly adopted in DRIVE. A pilot is supposed to test whether a new framework can produce new participation, new capabilities, and new forms of distribution system support. That inquiry is weakened if the utilities are allowed to satisfy the DRIVE pilot scale by relabeling resources they already built and enrolled under EmPOWER. A pilot built in substantial part on migrated EmPOWER demand response would reveal much less about whether DRIVE is actually working as intended.

The investor-owned utilities' proposals have ratemaking consequences as well. If existing EmPOWER demand response is moved into the DRIVE pilot, that transition should not become a means of obtaining more favorable cost recovery for the same underlying resources. Yet Baltimore Gas and Electric Company's ("BGE") filing seeks exactly that kind of treatment. In addition to proposing to move existing load-management offerings into DRIVE, BGE asks the Commission to authorize recovery of prudently incurred virtual power plant ("VPP") costs through a regulatory asset, with a return at the Commission-authorized weighted average cost of capital until the regulatory asset is fully recovered.⁶ The Commission should reject that request.

⁶ Baltimore Gas and Electric Company, PC77: *Inventory of Existing Demand-Side Management Programs and Rate Design Measures*, ML# 328165 (Case No. 9761, March 23, 2026) ("BGE demand side program inventory filing") at 16-17.

Accordingly, OPC asks the Commission to do two things. First, it should decline to authorize the transfer of existing EmPOWER demand response programs into the DRIVE pilot. Second, if the Commission nevertheless permits some movement of existing EmPOWER demand response into DRIVE, it should preserve the cost-recovery treatment that would otherwise have applied under EmPOWER to those migrated EmPOWER demand response resources.

BACKGROUND

1. The Commission requested inventories, expansion pathways, and statutory explanations concerning existing demand-side programs.

The Commission opened Public Conference 77 because it recognized that Maryland's demand-side policies were beginning to develop in separate silos.⁷ The notice explains that demand-side management, rate design, and distributed energy resource initiatives should not be considered in isolation, particularly where the same customers, devices, and operating strategies may affect multiple programs at once.⁸ The Commission therefore directed the utilities to provide a clearer picture of what already exists, what could be expanded, and how those efforts relate to the developing DRIVE framework.

To build that record, the Commission required each electric company to file an inventory of its existing demand-side management programs and rate measures, including descriptions, budgets, participation levels, peak-demand reduction estimates, and the

⁷ Md. Pub. Serv. Comm'n., *Notice of Hearing and Initiating a Public Conference*, Case No. 9761 and PC77, ML# 327574 (March 2, 2026).

⁸ *Id.* at 1-2.

methodologies used to calculate those estimates.⁹ The Commission also required the utilities to identify what additional summer peak reduction might be achieved in 2026 by expanding existing demand-side management programs or launching new ones, and then to provide similar projections and assumptions for 2027 and 2028.¹⁰ In addition, the notice required certain utilities to explain how moving demand response resources into DRIVE would comply with the EmPOWER statute.¹¹

2. The investor-owned utilities’ March 23 filings addressed whether existing EmPOWER demand response programs may be moved into the DRIVE pilot.

BGE’s filing provides the requested inventory information, describes possible expansion pathways for 2026 through 2028, and expressly proposes moving existing EmPOWER load management programs into the DRIVE pilot beginning in 2027.¹² BGE identifies Rider 15 Demand Response Service and Rider 26 Peak Time Rebate for that transition and presents the proposal as part of a broader effort to integrate existing load management resources into its developing virtual power plant framework under DRIVE.¹³ BGE also asks the Commission to authorize recovery of prudently incurred VPP costs through a regulatory asset and to allow a return at the Commission-authorized weighted average cost of capital until that regulatory asset is fully recovered.¹⁴

⁹ *Id.* at 2-3.

¹⁰ *Id.*

¹¹ *Id.* at 3-4.

¹² Baltimore Gas and Electric Company, PC77: *Inventory of Existing Demand-Side Management Programs and Rate Design Measures*, ML# 328165 (Case No. 9761, March 23, 2026) (“BGE demand side program inventory filing”).

¹³ BGE demand side program inventory filing at 16.

¹⁴ BGE demand side program inventory filing at 17.

Pepco Holdings Incorporated’s (“PHI”) filing for Potomac Electric Power Company (“Pepco”) and Delmarva Power (“Delmarva”) also addresses that question directly. After describing the companies’ existing demand response, time-of-use, and managed charging offerings, PHI includes a separate justification for transitioning load management programs from EmPOWER to DRIVE.¹⁵ PHI’s reasoning is that House Bill 864¹⁶ changed EmPOWER’s primary objective from megawatt-hour savings to greenhouse gas reduction, while traditional load management programs primarily shift usage from peak to off-peak periods rather than materially reducing total consumption.¹⁷ PHI therefore takes the position that those programs fit more naturally within DRIVE, while EmPOWER continues to support customer education and incentives for the adoption of smart devices that can later be enrolled in DRIVE programs to provide load management and distribution-system support.¹⁸

The Potomac Edison Company’s (“Potomac Edison”) filing is narrower, but it reaches a similar conclusion. Potomac Edison argues that the EmPOWER statute requires the company to develop and implement demand response offerings, but does not require those offerings to remain within EmPOWER itself.¹⁹ Potomac Edison therefore contends that its current demand response programs may be transitioned from its EmPOWER

¹⁵ Potomac Electric Power Company and Delmarva Power & Light Company, *Demand Side Program Inventory*, ML# 328153 (Case No. 9761, March 23, 2026) (“PHI companies demand side program inventory filing”).

¹⁶ H.B. 864, 2024 Leg., Reg. Sess. (Md. 2024).

¹⁷ PHI companies demand side inventory filing at 16.

¹⁸ PHI companies demand side inventory filing at 16-17.

¹⁹ The Potomac Edison Company, *DRIVE Act Implementation Comments*, ML# 328147 (Case No. 9761 and PC 77, March 23, 2026) (“PE demand side inventory filing”).

filings to its DRIVE Act filing without violating the statute, so long as demand response continues to be promoted and provided as a company offering.²⁰

The Southern Maryland Electric Cooperative (“SMECO”) and Choptank Electric Cooperative (“Choptank”) did not address the issue in the same way. SMECO’s March 23 filing responded to the Commission’s request for inventory information, but did not advance a comparable proposal to move existing EmPOWER demand response into DRIVE.²¹ Choptank likewise responded to the Commission’s inventory and planning requests, but did not present the same transition proposal found in the investor-owned utility filings.²² For that reason, these comments focus on the filings submitted by BGE, PHI, and Potomac Edison.

ARGUMENT

- I. **The Commission should not allow utilities to move existing EmPOWER demand response into DRIVE.**
 - A. **The EmPOWER statute requires demand response as part of utilities’ EmPOWER plans, and the DRIVE Act does not authorize the Commission to remove existing EmPOWER demand response and reclassify it as DRIVE pilot activity.**

The utilities ask the Commission to take programs that now operate as EmPOWER demand response and treat them instead as DRIVE pilot activity.²³ The

²⁰ *Id.* at 3-4.

²¹ Southern Maryland Electric Cooperative, *Public Conference 77 – SMECO’s Response to the Commission Request for Information* (Mar. 23, 2026).

²² Choptank Electric Cooperative, *Public Conference 77, Demand-Side Management Programs, Rate Design Measures, and Distributed Energy Resource Integration in Coordination with the DRIVE Act* (Mar. 23, 2026).

²³ See BGE demand side program inventory filing at 16-17; PHI companies demand side inventory filing at 16-17; PE demand side inventory filing at 3-4.

statutes do not support that approach. Read together, the EmPOWER provisions and the DRIVE Act indicate that demand response remains part of the EmPOWER framework, while DRIVE establishes a separate pilot or temporary tariff structure for distribution system support services.

The EmPOWER statute continues to treat demand response as part of the required mix of utility programs. Section 7-222 of the Public Utilities Article directs the Commission to require electric companies to develop and implement programs and services “to encourage and promote the efficient use and conservation of energy, *demand response*, and beneficial electrification” in support of the statutory greenhouse gas reduction goals.²⁴ The operative plan requirement is even more specific. Under § 7-223(a)(3), the Commission must require each electric company to develop and implement a plan that “achieves the greenhouse gas emissions reduction target established for the electric company . . . through cost-effective energy efficiency and conservation programs and services, *demand response programs and services*, and beneficial electrification programs and services.”²⁵ Demand response therefore remains part of the statutory EmPOWER framework even after House Bill 864 shifted EmPOWER’s focus toward greenhouse gas reduction.

House Bill 864 changed EmPOWER’s objectives and metrics, but it did not remove demand response from EmPOWER. Nor did it say that existing EmPOWER demand response programs may be redesignated as DRIVE pilots or temporary tariffs.

²⁴ PUA § 7-222(a) (emphasis added).

²⁵ PUA § 7-223(a)(3) (emphasis added).

The statute still treats demand response as part of the utilities' required EmPOWER plans,²⁶ and nothing in House Bill 864 suggests that the General Assembly intended to reassign those existing programs to a different statutory framework.

The DRIVE Act serves a different function. Section 7-1005 of the Public Utilities Article ("PUA") directs the Commission to develop a program under which each electric investor-owned utility establishes a pilot program or temporary tariff to compensate owners and aggregators of distributed energy resources for electric distribution system support services. The statute also provides that any later transition from a pilot or temporary tariff to a permanent program requires a separate public-interest determination by the Commission.²⁷ That is not the language that would have been used if the Act were meant to serve as a vehicle for shifting existing EmPOWER programs into DRIVE. The DRIVE Act instead creates a separate mechanism for developing and testing distributed energy resources and related services under a pilot or temporary tariff structure.

The relationship between the two statutes reinforces that reading. The DRIVE Act expressly provides one limited point of overlap with EmPOWER by allowing the Commission to permit "energy generated by a renewable on-site generating system" participating in a DRIVE pilot to count toward the utility's EmPOWER greenhouse gas reduction goals.²⁸ But the Act includes no similar language authorizing utilities to transfer existing EmPOWER demand response programs into DRIVE, redesignate those

²⁶ PUA § 7-223(a)(3).

²⁷ PUA § 7-1005(d)(2)-(3).

²⁸ PUA § 7-1005(e)(1). Note that this provision expressly refers to PUA § 7-211; which was repealed, reenacted, and recodified through House Bill 864 as PUA §§ 7-220 through 7-228.

programs as DRIVE pilots, or recover their costs through the DRIVE framework. That indicates that when the General Assembly wanted to create a link between the two statutes, it did so expressly, and it did not create the broader transfer mechanism the utilities now propose.

OPC is not arguing that no form of demand response could ever fall within the scope of § 7-1005. Some forms of demand response may qualify as distribution system support services within a DRIVE pilot or temporary tariff. The problem is the utilities' broader position that existing EmPOWER demand response may simply be moved out of EmPOWER and into DRIVE without regard to EmPOWER's continuing requirement for demand response. The statutes do not provide a clear basis for that kind of transfer, and the Commission should not approve it.

The Commission must still give effect to the EmPOWER provisions the General Assembly left in place. Even if the Commission has some discretion to approve program changes as EmPOWER evolves, that discretion should be exercised in a way that preserves demand response within the EmPOWER portfolio unless and until the legislature directs otherwise. At a minimum, the Commission should not approve the utilities' request to shift existing EmPOWER demand response into DRIVE unless the utilities first show how demand response will remain part of their EmPOWER plans in a manner consistent with §§ 7-222 and 7-223. Absent that showing, the Commission should reject the requested transfer.

B. Even if the Commission has some discretion to move existing EmPOWER demand response into DRIVE, it should not do so here.

Even if the Commission concludes that it has some discretion to allow existing EmPOWER demand response programs to be moved into the DRIVE Act framework, the Commission should decline to do so at this time. The utilities have not shown that such a move is necessary, and allowing it now would reduce the value of the DRIVE pilots as tests of new distributed energy resource participation and new electric distribution system support services.

1. The Commission should not move existing EmPOWER demand response into a pilot or temporary tariff before deciding whether a permanent DRIVE program is in the public interest.

The DRIVE Act does not establish a permanent right to operate programs or recover costs through an electric distribution system support services (“EDSSS”) pilot. It establishes a pilot program or temporary tariff.²⁹ The statute then provides that a transition to a permanent program or tariff may occur only if the Commission later determines that such a transition is in the public interest.³⁰ The statute itself reflects that conditional structure, and Order No. 91917 reinforced it by treating the EDSSS pilots as a two-year pilot framework that must be evaluated before any broader transition occurs.

The utilities are not simply proposing to test new EDSSS offerings. They are asking the Commission to place existing EmPOWER demand response into that pilot framework now, before the Commission has decided whether a permanent DRIVE-based

²⁹ PUA § 7-1005(b)(1)(i).

³⁰ PUA § 7-1005(d)(2)-(3).

structure should exist at all. Existing EmPOWER demand response programs are already in operation under a different statutory framework. Significant resources have been spent on developing, administering, and evaluating these programs under EmPOWER. Moving them now into a pilot or temporary tariff would assume that the pilot will later mature into something permanent, even though the statute requires a separate public-interest determination before that can happen. The Commission also should consider what would happen if the pilot does not result in a permanent program, including the resources that would be required to move these programs back into EmPOWER later.

Existing EmPOWER demand response already operates under an established statutory framework. The Commission should not uproot those programs and place them into a pilot structure whose long-term status remains unresolved. If the Commission later determines that a permanent DRIVE-based program is in the public interest, it can address whether any such transition should occur at that time, on a fuller record and with a clearer understanding of how the pilot has performed.

2. The utilities should be required to pursue new EDSSS opportunities rather than simply repurposing existing EmPOWER demand response.

There is also a practical reason not to allow the proposed transfer at this stage. If the utilities are permitted to satisfy a substantial portion of the DRIVE pilot with resources and participation that already exist under EmPOWER, the pilot will reveal much less about whether the DRIVE framework can actually produce new participation and new forms of electric distribution system support. Rather than encouraging innovation, this approach would largely relabel existing activity.

The DRIVE Act is not best read as an invitation simply to relabel legacy demand response. It establishes a framework for compensating distributed energy resources for electric distribution system support services.³¹ The statute places particular emphasis on customer-side distributed resources, including renewable on-site generating systems and related participation under pilot programs.³² Read as a whole, the Act is directed toward developing new forms of participation and support, not merely shifting existing thermostat and load-control programs from one docket to another.³³

That does not mean load-management resources have no place in a DRIVE pilot. Smart thermostats, direct load control switches, and similar resources may well play a role. But if demand response is included in the pilot, the Commission should require the utilities to show that it reflects new enrollment or new EDSSS-oriented program design, rather than simply counting legacy EmPOWER demand response under a different name.

A pilot built largely on migrated EmPOWER demand response would tell the Commission very little about the question DRIVE was enacted to test. It would not say much about whether the DRIVE framework can attract new customer enrollment, support new aggregation models, develop export-capable distributed resources, or create new forms of distribution system support. A pilot should test new capabilities, not mainly repackage capabilities that already exist.

³¹ PUA § 7-1005(a).

³² *Id.*

³³ *See* PUA § 7-1005(f).

The DRIVE pilot can be used to develop other kinds of participation, including managed charging, export-capable distributed resources, renewable on-site generating systems, paired storage, and other customer-side resources. Many such resources would require additional controls, incentives, enrollment, program design, and dispatch capability before they could provide meaningful support on demand. But that is the work the pilot is intended to encourage. The utilities should not be permitted to avoid it by relying primarily on legacy programs that were not designed as DRIVE pilots in the first place.

The utilities argue, in one form or another, that existing demand response should play a significant role in the early stages of the DRIVE pilot.³⁴ But that approach would allow them to respond to the Commission's direction for a more ambitious pilot largely by changing labels rather than building new capabilities. The Commission rejected the original EDSSS proposals because they were too narrow and insufficiently ambitious.³⁵ It should not now permit the utilities to address that problem mainly by importing legacy EmPOWER demand response into the pilot structure.

For those reasons, even if the Commission concludes that it has some discretion to allow existing EmPOWER demand response to move into DRIVE, it should decline to exercise that discretion here. The better course is to require the utilities to pursue new

³⁴ See BGE demand side program inventory filing at 15-16; PE demand side program inventory filing at 2.

³⁵ Order No. 91917 at 35.

EDSSS opportunities and to demonstrate real incremental participation and capability under the pilot.

II. If the Commission does allow existing EmPOWER demand response to move into DRIVE, it should use the EmPOWER cost recovery treatment that would otherwise apply to those resources.

Even if the Commission concludes that it has authority to allow existing EmPOWER demand response programs to move into the DRIVE framework, it should not allow the utilities to obtain more favorable cost recovery for those same resources simply by changing the statutory label attached to them. If a resource is now part of EmPOWER demand response and the Commission nevertheless permits it to move into DRIVE, the cost recovery treatment for that resource should remain consistent with the EmPOWER framework that would otherwise have applied.

This is significant because House Bill 864 restricted EmPOWER cost recovery in a way that lowers the total amounts customers will pay for EmPOWER program costs. The revised statute no longer reflects the earlier EmPOWER model under which program costs were accumulated and amortized over time. Instead, the statute is directed toward recovery of new EmPOWER costs in the year incurred, and it limits carrying costs on unpaid or unamortized balances to the utility's average cost of outstanding debt.³⁶ The General Assembly therefore made a policy choice to narrow the cost recovery treatment available for EmPOWER program costs and deferred balances.

³⁶ PUA § 7-222(d)(2).

The Commission should not construe DRIVE in a way that allows utilities to undo that legislative choice through reclassification. The DRIVE Act provides for recovery of reasonable costs incurred in participating in and administering EDSSS programs and in offering incentives or rebates, and it further states that, “[t]o the extent feasible,” those costs should be recovered within the calendar year in which they were incurred.³⁷ That language is not best read as creating a more favorable ratemaking vehicle for resources that otherwise would have remained in EmPOWER. If anything, it points in the direction of timely recovery of program costs, not enhanced recovery through migration from one statutory framework to another.

BGE has proposed that if demand response or other EDSSS resources are used to defer or avoid distribution system upgrades, those resources should receive the same favorable cost recovery treatment that traditional capital infrastructure would have received.³⁸ That does not follow. A non-wires alternative is supposed to reduce customer costs by avoiding unnecessary infrastructure spending. It should not preserve the same earnings opportunity the utility would have received if the avoided capital project had been built anyway. If the lower-cost alternative is treated as though it were the higher-cost investment it replaces, much of the value of the substitution is lost.

The point is even clearer here because the costs at issue do not present the same risk profile as traditional capital investment. When a utility constructs physical distribution infrastructure, it takes on construction risk, operational risk, and the ongoing

³⁷ PUA § 7-1007(b).

³⁸ BGE demand side program inventory filing at 17.

obligation to manage and maintain that asset over its useful life. By contrast, costs associated with third-party aggregators, customer incentives, and other pilot-related expenditures are largely programmatic. They compensate participation or services, rather than finance utility-owned infrastructure that the utility must build, operate, and maintain for decades. The Commission therefore should not assume that weighted-average-cost-of-capital treatment is appropriate simply because the utility characterizes the resource as a non-wires solution.

Allowing more favorable ratemaking treatment for migrated resources would also create the wrong incentive. It would encourage utilities to repackage existing EmPOWER demand response as DRIVE resources in order to obtain better cost recovery treatment than those same resources would receive if they remained where they originated. The Commission should not encourage that result.

Accordingly, if the Commission allows existing EmPOWER demand response resources to move into DRIVE, it should require that the costs associated with those resources be treated consistently with the EmPOWER framework that would otherwise have applied. To the greatest extent feasible, those costs should be expensed in the year incurred. And if the utility seeks to defer amounts associated with those migrated resources through a regulatory asset or similar mechanism, those amounts should receive no more favorable treatment than comparable EmPOWER balances, including carrying costs capped at no more than the utility's average cost of outstanding debt where EmPOWER would have imposed that limit.

That approach would prevent utilities from using migration into DRIVE as a means of improving cost recovery for existing EmPOWER demand response resources. It would also allow the Commission, if it is inclined to permit some movement of resources, to do so without nullifying the more restrictive cost recovery structure the General Assembly adopted for EmPOWER through House Bill 864.

The Commission should therefore make clear that any decision to permit movement of existing EmPOWER demand response into DRIVE would not alter the cost recovery treatment that otherwise would have governed those resources. If the utilities want to move those resources, they may do so only on the understanding that reclassification does not produce a more favorable ratemaking result.

CONCLUSION

The Commission should not allow the utilities to use DRIVE as a vehicle for moving existing EmPOWER demand response into a different statutory framework. EmPOWER still requires demand response, and nothing in the DRIVE Act authorizes the Commission to remove existing EmPOWER programs from that structure and redesignate them as DRIVE pilot activity. Nor would doing so make for a sound pilot. A DRIVE pilot should test new participation, new capabilities, and new forms of electric distribution system support, not rely chiefly on resources the utilities already developed under another statute.

The Commission also should not allow migration to become a means of improving ratemaking treatment for the same underlying resources. If existing EmPOWER demand

response is nevertheless permitted to move into DRIVE, the cost recovery treatment for those resources should remain no more favorable than the treatment that would otherwise have applied under EmPOWER.

For those reasons, the Commission should deny the requested transfer of existing EmPOWER demand response into DRIVE. In the alternative, it should make clear that migrated resources may not be used to satisfy DRIVE pilot scale merely by being relabeled, and that any migrated resources will remain subject to no more favorable cost-recovery treatment than would otherwise have applied under EmPOWER.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of April 2026, the foregoing Comments of the Office of People's Counsel were e-mailed to all parties of record to this proceeding.

Respectfully submitted,

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