

**BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND**

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

The majority of commenters agree that MRPs have not achieved the benefits the Commission anticipated and that the MRP construct is inconsistent with the public interest. Indeed, the Maryland Energy Administration (“MEA”), the Apartment and Office Building Association (“AOBA”), and the Commission’s Technical Staff express serious concerns with how MRPs transfer risk away from utilities and onto shareholders, how MRPs are unable to adequately constrain utility costs, and how MRPs have failed to reduce administrative burdens. In short, almost all of the comments from those that participated in MRP proceedings conclude that MRPs have fallen well short of the Commission’s expectations and have harmed the public interest.¹

¹ Local 410 of the International Brotherhood of Electrical Workers filed comments in support of MRPs.

Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company (collectively “the Exelon companies”) would like the Commission to ignore the *actual* results of MRPs. Instead, the Exelon companies make unsupported, conclusory assertions about the advancement of State policy and the purported value MRPs have to customers. They argue that the accelerated infrastructure spending that MRPs enable is necessary and a customer benefit. Yet, their comments fail to address affordability—both in the near- and long-term—a telling omission given the rapidly increasing energy bills that customers are experiencing with the MRPs.

The Exelon companies’ failure to acknowledge the increases in customer bills resulting from the MRPs misses the primary lesson learned from the pilot: “By any measure, utilities win and customers lose[.]”² The Exelon companies’ comments primarily focus on increased investment and business development—not on improved performance or cost-effectiveness. In defending MRPs, they place their investor interests above the interests of their customers, wholly failing to show how customers are better off after three years of MRPs.

Instead of acknowledging customers are *not* better off after three years of MRPs, the Exelon companies ask customers and other stakeholders to learn to live with MRPs.³ But it would be irresponsible to continue subjecting customers to the effects of a flawed ratemaking construct while attempting to reform it. Stakeholder comments filed in this

² Case No. 9692, OPC Ex. 41A, Alvarez-Stephens Direct at 16:9-10.

³ See BGE Initial Comments at 17 (“Part of the lessons BGE expects stakeholders will collectively learn as we move forward with MRPs is how to improve the efficiency of the process in order to maintain and enhance benefits while also further alleviating administrative burdens.”).

proceeding show that the MRP construct is not in the public interest and should be ended. But if the Commission does continue with some form of MRPs, a complete overhaul is necessary—and comprehensive regulations should be implemented before consideration of any new MRP applications.

I. MRPs allow utilities to elevate investor interests over the public interest, thereby subverting a key purpose of utility regulation served by standard ratemaking.

The Exelon companies' comments exemplify how Maryland's MRP construct elevates private utility investor interests over the public and customer interests. Throughout their respective comments, the Exelon companies explain how MRPs have enabled them to make “critical” and “deliberate” capital investments.⁴ Indeed, the Exelon companies confirm that enabling increased capital investment—upon which their profits are based—is a key feature of MRPs.⁵ Noticeably absent is any consideration of how customer rates are impacted by those increased investments.

The Exelon companies argue that the benefits of a ratemaking construct that favors the interests of investors will trickle down to customers.⁶ The companies emphasize the Regulatory Research Associates (“RRA”) ratings of Maryland's regulatory environment to argue that any change in direction on MRPs would be “harmful to the economic health of [Maryland's] utilities”⁷ Yet, for at least two reasons, RRA's rankings are not a credible metric by which to measure the benefits and value of MRPs.

⁴ BGE Initial Comments at 3; PHI Initial Comments at 5.

⁵ BGE Initial Comments at 15; PHI Initial Comments at 2

⁶ BGE Initial Comments at 23; PHI Initial Comments at 7.

⁷ BGE Initial Comments at 23.

First, RRA evaluates regulatory environments from an investor perspective and assess regulatory risk *to investors*.⁸ Indeed, the RRA evaluations expressly acknowledge that “[t]hey are not an assessment of whether regulators are ‘doing a good job.’”⁹ Customer risk and how regulation may affect the public interest are—by design—entirely absent from RRA’s ranking considerations. Regulatory environments that more closely scrutinize utility investments—and profits—are downgraded; environments that are more profitable to investors receive higher rankings. Indeed, one sure way to increase a State’s RRA would be to simply increase the utilities’ return on equity to unjust and unreasonable levels, but that would violate the law.

Second, RRA ranking decisions are not related to the actual results of MRPs. BGE notes how RRA raised the State’s ranking “within days” after the issuance of Order No. 89226—well before BGE even filed its first MRP and when the actual results of MRPs were unknown.¹⁰ Yet, before the Commission’s decision on BGE’s second MRP, RRA proceeded to downgrade Maryland’s rankings twice,¹¹ despite the Commission’s expansion of Maryland’s experiment with MRPs to all three Exelon utilities, and despite the significant increase in capital investment that each utility’s MRP spurred.

Even the Exelon companies are split on how to consider Maryland’s RRA ranking. BGE implies that continuing with MRPs will improve Maryland’s ranking.¹² Pepco and DPL, however, frame Maryland’s ranking downgrade as an indicator that MRPs “do not

⁸ Dec. 4, 2023, *RRA Regulatory Focus State Regulatory Evaluations* at 3.

⁹ *Id.*

¹⁰ BGE Initial Comments at 5.

¹¹ *Id.* at n. 4.

¹² BGE Initial Comments at 5–6.

allow investors to make undue profits.”¹³ That the Exelon companies can take away two conflicting indicators from the RRA’s rankings with respect to MRPs illustrates how the rankings have no substantive value. The RRA rankings are based on myopic analysis and have no place in the Commission’s assessment of whether MRPs are in the public interest.

Rather than relying on a myopic investor-focused ranking system, Pepco and DPL discuss the “improved opportunity to earn its authorized rate of return.”¹⁴ They claim that the benefits of increased opportunity to earn its authorized return trickle down to customers, in the form of “savings that are passed to customers when setting rates.”¹⁵ BGE similarly argues that moving away from MRPs may increase customer bills by hindering “the Company’s ability to obtain capital at reasonable rates.”¹⁶

What the Exelon companies fail to discuss, however, are any *actual* impacts to customers related to the investment community’s perception of Maryland’s regulatory environment and the earned increased ROEs relative to standard ratemaking that the Exelon companies have gained.¹⁷ The Exelon companies provide no evidence of any difficulties they had in attracting capital before MRPs. And the Exelon companies provide no evidence of any customer savings due to the lower borrowing costs that MRPs

¹³ PHI Initial Comments at 7.

¹⁴ PHI Initial Comments at 6.

¹⁵ PHI Initial Comments at 7.

¹⁶ BGE Initial Comments at 6, 23.

¹⁷ *See, e.g.*, PHI Initial Comments at 7 (explaining how Pepco and DPL’s earned ROEs under the MRP construct are higher than ROEs earned from 2011 through 2021).

purportedly enable. Rather, the Exelon companies simply claim that, because their investors benefit from MRPs, customers must benefit also. No evidence bears this out.

Finally, the Commission should disregard the Exelon companies' attempt to tie the financial health of the *State's* utilities generally to the continued existence of MRPs.¹⁸ The Exelon companies are the only utilities that operate under MRPs. No other Maryland utilities have availed themselves of the MRP construct, and the argument that links the financial health of Maryland utilities writ large to MRP ratemaking is flawed.

II. The Exelon companies cannot and do not show how customers are better off under MRPs.

This lessons learned proceeding intends to look back and analyze the actual results and impacts of MRPs. The Commission's notice initiating this proceeding invites the submission of "information and comments on how BGE's first MRP has fared relative to the goals and potential benefits discussed in Order No. 89226."¹⁹ While the Exelon companies' comments broadly claim MRPs achieve the benefits expected by the Commission, the companies provide little support for their claims.

A. Offsetting the Exelon companies' own rate increase is not a customer benefit.

The Exelon companies argue that the MRP construct benefits customers because it uniquely allowed for the accelerated return of tax benefits to reduce the impact of their own rate increases on customers.²⁰ This is hardly a benefit. It is simply returning money to customers already owed them, albeit earlier. More telling is that the need for a rate

¹⁸ BGE Initial Comments at 6; PHI Initial Comments at 7.

¹⁹ Notice Issued on August 15, 2024.

²⁰ See PHI Initial Comments at 9-10; BGE Initial Comments at 3.

offset in the first place is due to the companies' excessive and bloated MRP capital investment plans. Moreover, accelerating the return of tax benefits has no effect on the long-term impact of the companies' increased capital spending. The use of accelerated tax returns may have blunted the impact of BGE's proposed MRP 1 rate increases, but it has no impact on BGE's additions to net plant, which customers will continue to pay for over the coming decades. The rate increases will remain long after the credits have been expended. As OPC witness Effron noted both in Case No. 9645 and 9692, the accelerated return of tax benefits comes at a cost—future customers will be required to pay higher rates to make up for the accelerated return.²¹ This short-term benefit comes at a long-term cost.

Despite short-term benefits coming with long term costs, the Exelon companies seek credit for the “innovation” of artificially and temporarily reducing the amount of rate shock. They imply that such relief could not have been provided without the MRP construct,²² but this implication is speculative at best. The Commission could very well have authorized an accelerated amortization of tax benefits as an adjustment in a historic test-year proceeding.

²¹ Case No. 9645, Order No. 89678 at 11; Case No. 9645, OPC Ex. 3, Effron Direct at 4:21 – 5:8; Case No. 9692, OPC Ex 36, Effron Direct at 17:5-13.

²² BGE Initial Comments at 7; PHI Initial Comments at 2.

B. The Exelon companies do not demonstrate that MRPs provide any meaningful transparency benefits.

1. Actual MRP results show few customer benefits from the “unprecedented transparency” of MRPs.

BGE claims that added transparency in MRPs affords more meaningful discussion between stakeholders and utilities.²³ Pepco and DPL go so far as to claim that MRPs afford the Commission and stakeholders “greater insight, understanding and oversight into utilities capital investment and spending plan[s]. . . .”²⁴

The portrayal of MRPs as a collaborative process—with stakeholders and utilities working together to optimize utility investment plans—is fictitious. The Exelon companies’ rhetoric is belied by the actual results of the MRPs. In each MRP proceeding, the Exelon companies were not receptive to stakeholder feedback and opposed nearly all proposed adjustments or modifications to their capital investment plans.

Aside from opposition to proposed changes, the utilities generally provided insufficient information in response to stakeholder discovery requests. Stakeholders and their experts could not complete their analysis without substantial follow-up discovery. For instance, BGE’s comments contend that the company provided, among other information, documentation “detailing project scope, alternatives considered, qualitative and quantitative benefits.”²⁵ As a general matter, the information utilities provided regarding project scope and alternatives was minimal, typically comprising a few short conclusory sentences. And the companies rarely provided quantified benefits, making it

²³ BGE Initial Comments at 8–13.

²⁴ PHI Initial Comments at 13.

²⁵ BGE Initial Comments at 9.

impossible—without significant effort and follow-up discovery—to determine the value to customers the utility’s investment plans. As the examples below show, what benefits the company did identify were typically stated qualitatively, with little substantiating analysis or data provided:

- Project 61159 (Electric): Customer Reliability Support Projects – “This program is to improve reliability and customer satisfaction. Implementing engineering solutions improves system performance by reducing the frequency and duration of outages experienced by customers.”²⁶
- Project 65145 (Electric): Calverton Road Substation Feeders 4803 and 4805 4kV Conversion – “Reduce maintenance on 4kV oil switch inspection program by removing 32 oil switches. Improve system operability and provide restoration capability. Manage aging substation and distribution assets. Improve SAIFI and CAIDI.”²⁷
- Project 56695 (Gas): Proactive Service Renewals – “Targeted replacement of service assets that show enhanced risk profiles will help avoid future leaks and unplanned customer outages, improving safety and reliability for customers.”²⁸
- Project 58194 (Gas): System Reliability – Gas Distribution – “Lessens radial systems where single points of failure could result in customer outages, as well as obsolete systems and regulator stations. Addresses systems in flood prone areas. Program will improve interconnectivity of the system, allowing for greater system operational flexibility in planned and emergency work. Decreased potential of large gas outages that would tie up gas crews. Decreased potential of customers outage.”²⁹

Rather than providing useful *data* to demonstrate the need for the projects proposed during the MRP period for stakeholders’ review, the Exelon companies

²⁶ Case No. 9692, BGE Ex. 31, Apte Direct, Exhibit AA-1 at 27.

²⁷ *Id.* at 30.

²⁸ Case No. 9692, BGE Ex. 34, White Direct, Exhibit DCW-1G at 9.

²⁹ *Id.* at 11

typically provided narrative justifications like those bulleted above. As a result, stakeholder time and resources that could have been devoted to assessing project needs and justifications were instead spent determining what information was lacking and how stakeholders could acquire it. That is not meaningful transparency.

2. The MRP filings impede transparency by obfuscating the rate impact of utility capital spending.

Finally, the MRP capital budget plans the utilities propose do not fully convey what spending is included in MRP base rates and reconciliation amounts. MRP base rates rely on the utility's projections for when projects included in their workplan may go into service (thereby becoming used and useful). Expected in-service dates—if concretely identified—are scattered throughout the capital work plan requiring stakeholders to engage in detailed analysis just to identify which costs are actually reflected in base rates for each rate year. Indeed, the testimony of AOBA witness Bruce Oliver regarding Pepco's proposed second MRP thoroughly explains the problem of the misalignment between utility budgets and costs.³⁰

Further, the MRP reconciliation filings obscure the relationship between the utility's capital budgets and the rate base upon which the company's revenue requirement is based. Utility reports on capital budget variances do not identify the specific projects that went into service during the rate year in question. And not all capital project budgets reflect costs included in rate base. Directing parties'—and the Commission's—focus on

³⁰ Case No. 9702, AOBA Ex. 9, Oliver Direct at 14–16.

capital budget variances rather than actual additions to net plant undermines the prudence review that is supposed to occur during the reconciliation proceeding.

Ultimately, this functional disconnect between capital budgets and rate base further obscures the costs to customers—and prudence—of utility capital spending, thereby weakening the Commission’s oversight. Imprudent cost overruns for a project can be masked by pushing back a project’s expected in-service date to a subsequent MRP. Overly ambitious project completion forecasts can be used to inflate MRP base rates, with projects strategically substituted or “reprioritized” throughout the duration of the MRP to ensure that the utility’s plant-in-service keeps pace with its forecast, even if the actual work the utility completes is materially different from its forecasted capital plan.³¹

3. The flexibility MRPs afford to utilities executing their capital plans undermines transparency benefits.

The Exelon companies fail to reconcile the tension inherent in affording stakeholders an opportunity to review workplans that are entirely subject to change. BGE’s comments point to two “annual compliance filings”—the Annual Information Filing (“AIF”) and the forecasted Project List—as an example of an opportunity for stakeholders to compare original and updated forecasts, as well as to compare projected to actual costs.³² This information is more than what utilities are required to provide with standard ratemaking construct,³³ but is undermined by what BGE describes as the

³¹ For example, BGE’s Rate Year 3 reconciliation filing reports an \$11.1 million (0.13 percent) variance between actual and projected electric plant while overspending its capital budget by 44 percent million. ML# 309241, Frain Reconciliation Direct, Exhibit JCF-2, Attachment 2-E.

³² BGE Initial Comments at 11.

³³ However, there is nothing prohibiting the Commission from requiring utilities to provide such information on an annual basis outside of an MRP. *See* PUA §§ 2-112; 2-115.

“flexibility” of the MRP framework.³⁴ BGE cites how MRPs allow “the utility to appropriately adjust workplans underlying forecasted rates” as a “key factor.”³⁵

As OPC and AOBA’s initial comments note, utility “deviations” and “adjustments” from the forecasted workplans undermine the transparency benefits advanced review affords.³⁶ While stakeholders may file comments on the utilities’ Annual Information Filing, there is no such formal opportunity afforded for the annual project lists filed with the Commission. Nor is the utility required to adjust its project list in light of stakeholder feedback. Additionally, the annual project lists filed by each of the Exelon companies often contain significant and material deviations from their MRP capital workplans. BGE’s 2023 project list, for instance, included spending for fiber optical cable investment that was never proposed or considered in Case No. 9465.³⁷ And BGE’s 2023 Annual Information Filing reported new capital expenditures related to city conduit that had not been disclosed in either its 2023 project list or proposed MRP workplan.³⁸

Moreover, the adjustments the utilities made to the capital plans over the course of MRPs did not benefit customers. For instance, take BGE’s Capacity Expansion – Clare Street substation project. The capital plan, upon which the company’s MRP base rates are based, estimated the project in-service date would be December 2023 and forecasted a total spend over the duration of its MRP of \$35.5 million, including \$16.3 million for

³⁴ BGE Initial Comments at 14.

³⁵ BGE Initial Comments at 13-14. Similarly, Pepco and DPL note how the utility may deviate “from the projected timing of capital expenditures on a project.” PHI Initial Comments at 14.

³⁶ AOBA Initial Comments at 11; OPC Initial Comments at 24–25.

³⁷ ML# 242894, BGE 2022 Project List at 2.

³⁸ ML# 308670, BGE 2023 AIF at 3, n. 11.

2022 and \$17.2 million for 2023.³⁹ Yet, the company spent \$25.8 million on the Clare Street substation project—including an actual spend of \$5.03 million in 2022 and \$19.5 million in 2023⁴⁰—with the project projected to go into service by June 2024.⁴¹

Customers, however, did not get any relief due to the reduced spending on this project in MRP 1. Instead, the company pursued new projects, “pulled forward” and “advanced” spending in other project categories, ultimately reporting distribution capital overspend of 25 percent in 2022 and 44.9 percent in 2023.⁴²

OPC recognizes a need to afford the company a degree of flexibility with the work it pursues. But when the company can adjust its capital workplans with little or no Commission oversight—as is currently the case—the workplans that stakeholders review provide little meaningful insight into the utility’s capital spending decisions, thereby diminishing any influence stakeholders—and the Commission—purportedly have over utility capital spending.

The Exelon companies’ capital overspends in each year of their MRPs, the corresponding MRP-induced rate increases, and the substantial reconciliation revenues that BGE and Pepco’s customers are being asked to pay all show that, from the customer’s perspective, the transparency afforded by the MRP construct has not been meaningful.

³⁹ Case No. 9645, BGE Ex. 8, Apte Direct, Exhibit AA-1E at 7.

⁴⁰ Case No. 9692, BGE Ex. 37, Frain Supplemental Direct, Exhibit JCF-9, Attachment 1-E at 1; BGE 2023 Reconciliation, Frain Direct, Exhibit JCF-3, Attachment 1-E at 1.

⁴¹ Case No. 9692, BGE Ex. 31, Apte Direct, Exhibit AA-1E at 6.

⁴² Case No. 9692, BGE Ex. 37, Frain Supplemental Direct, Exhibit JCF-9, Attachment 3-E; BGE 2023 Reconciliation, Frain Direct, Exhibit JCF-3, Attachment 3-E.

C. The reconciliation mechanism harms customers.

The Exelon companies mischaracterize the reconciliation mechanism as a consumer protection mechanism. BGE argues that reconciliation ensures “customers only pay for a utility’s actual, prudently incurred costs.”⁴³ Pepco and DPL argue that the reconciliation serves to ensure that, when variances occur, “rates charged to customers remain just and reasonable.”⁴⁴

Actual costs are not just and reasonable if they are excessive. That customers pay no more than the utility’s actual costs is of little consolation when bills increase because of excessive spending. Managing costs within the approved revenue requirement is beneficial to customers. But providing the opportunity to recover costs *above* that revenue requirement discourages utilities from containing costs, to customers’ detriment. In sum, the reconciliation mechanism provides no protection for the long-term impact of capital budget exceedances.

The Exelon companies point out that the reconciliation mechanism ensures that utilities do not earn above their authorized return. But this benefit is realized only where a utility reports lower operating costs, lower plant in service amounts, or higher operating income than its forecasts.⁴⁵ Utilities operating under MRPs are more likely to overspend than underspend—an acknowledgement made by BGE’s own witness⁴⁶—making any

⁴³ BGE Initial Comments at 16

⁴⁴ PHI Initial Comments at 15.

⁴⁵ In the first year of DPL’s MRP, the utility reported an \$8 million overcollection due primarily to higher than forecasted operating income. Case No. 9681, ML# 308584, Delmarva Power & Light Co. 2023 Annual Information Filing (March 29, 2024)

⁴⁶ Case No. 9692, BGE Exhibit 42A, Vahos Rebuttal at 41, lines 3-10.

protection resulting from reconciliation meaningless, notwithstanding the Exelon’s companies’ argument. Consider BGE’s MRP 1 reconciliations:

Table 1: BGE MRP 1 Reconciliation Revenue Requirements

| (dollars in millions) | Rate Year 1⁴⁷ | Rate Year 2⁴⁸ | Rate Year 3⁴⁹ |
|------------------------------|---------------------------------|---------------------------------|---------------------------------|
| Electric | \$10.711 | \$43.945 | \$78.938 |
| Gas | \$7.117 | \$14.786 | \$73.338 |

Collectively, the reconciliation mechanism has resulted in BGE and Pepco seeking to recover more than \$268 million *above* their authorized revenue requirements.⁵⁰ A mechanism that results in substantial rate increases—on top of the base rate increases—does not protect customers.

D. The Exelon companies do not identify any appreciable advancement of State policy objectives due to the MRP.

In their initial comments, the Exelon companies each claim that MRPs have enabled investments to meet identified State policy goals. Notably, the focus of the Exelon companies’ comments is *prospective*. Pepco and DPL identify policies that “will

⁴⁷ Case No. 9692, BGE Ex. 36, Frain Direct at 55, lines 1-3.

⁴⁸ Case No. 9692, BGE Ex, 37, Frain Supplemental Direct at 7, lines 13-16.

⁴⁹ BGE 2023 Final Reconciliation, Frain Direct at 5, lines 4-7. OPC notes that BGE’s final reconciliation is currently pending before the Commission.

⁵⁰ For Pepco, the amounts for Years 2022–2024 are \$1.48 million, \$7.6 million, and \$31 million. Case No. 9702, Pepco Ex. 16A, Leming Direct at 60, lines 13-15, Case No. 9702, Pepco Ex. 17 Leming Supplemental Direct at 1, lines 19-21, Case No. 9655, ML# 311238, Pepco Final Reconciliation, Leming Direct at 5, lines 16-18.

require a significant transformation of the electric distribution system.”⁵¹ BGE discusses “how the Company foresees the growing need for capital investment,” and how MRPs are “uniquely prepared” to support the increased levels of investment that many of the State’s policy goals “will undoubtedly require.”⁵² What the utilities’ comments fail to identify are any specific investments necessary to meet State policy goals that, but for MRPs, the utilities would be unable to make.

Pepco and DPL list five different policy goals that it says “will require a significant transformation of the electric system.”⁵³ None of these five policies were in place when BGE and Pepco’s MRPs were proposed and approved.⁵⁴ Moreover, none define the scope of required utility investment. While load growth may increase as the State moves toward electrification, the Commission’s electrification study found that, even with high electrification, the Exelon companies have room on their systems for growth beyond the period of the MRPs, and modest growth thereafter.⁵⁵ And there are no Commission orders that mandate specific utility investments.

⁵¹ PHI Initial Comments at 4.

⁵² BGE Initial Comments at 13–14.

⁵³ PHI Initial Comments at 4.

⁵⁴ The Climate Solutions Now Act was enacted in 2022. The Distributed Renewable Integration and Vehicle Electrification Act was enacted in 2024. The regulations regarding interconnection upgrade cost allocation resulting from RM 81 were promulgated in 2024. Montgomery County’s Comprehensive Building Decarbonization law was passed in 2022. The initial draft of the Prince George’s County’s Climate Action Plan was issued in 2022.

⁵⁵ 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),

Beyond pointing to accelerated spending on infrastructure, the Exelon companies provide no evidence showing how their initial MRPs have appreciably advanced State policy objectives. In their most recent MRP cases, both BGE and Pepco proposed electrification investment plans—purportedly to advance State policies but developed without Commission direction or stakeholder insight. The Commission rejected all of these except for a small smart-inverter pilot.⁵⁶

Beyond general platitudes, the Exelon companies fail to tie their descriptions of State policy to their MRP capital spending. Infrastructure spending—and rate base growth—drives Exelon’s 5-7 percent annualized earnings growth target.⁵⁷ The Exelon companies’ vision for achieving Maryland’s policy goals takes that as a given. But the Exelon companies have failed to demonstrate a connection between their investments and State policy goals—and certainly not that MRPs themselves are what enable any such investments.

E. Reducing the number of rate cases does not alone ease administrative burdens.

The Exelon companies’ argument that MRPs have reduced administrative burdens fails the test of reality. The companies’ sole support is that utilities do not have to file as many rate cases.⁵⁸ Staff and OPC’s initial comments, however, both explain that MRPs

https://opc.maryland.gov/Portals/0/Files/Publications/Reports/Electrification%20Headroom%201.23.23%20final.pdf?ver=9_IJ5mudTjZcWEMkOTrJeg%3d%3d.

⁵⁶ See Order No. 91181 at 105 (approving Pepco’s proposed Smart Inverter Program but deferring consideration of cost recovery for the program to a later date.).

⁵⁷ Exelon Corporation, *Summer 2024 Investor Meetings* at 22, <https://investors.exeloncorp.com/static-files/8b26ab69-e0b4-4d49-9d13-34a551265684>.

⁵⁸ BGE Initial Comments at 16; PHI Initial Comments at 10

have *increased* administrative burdens.⁵⁹ Staff’s comments correctly detail the continuing obligations MRPs require—reviewing proposed project lists and Annual Information 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, AIFs, and reconciliations. Each of these obligations introduces more tasks and proceedings for parties to commit scarce, significant resources if they are to be suitably addressed.⁶⁰

The Exelon companies wholly ignore the additional burdens the annual compliance filings impose on stakeholders. These filings are necessary because they provide important information to stakeholders, OPC, Staff, and the Commission about the company’s execution of its MRP. But it consumes resources to comprehensively review these filings. The fact that there is no dedicated proceeding for the AIF filings—as Pepco and DPL’s comments note⁶¹—does not mean reviewing the filings require fewer resources if they are to receive sufficient review. Not all stakeholders to MRP proceedings have in-house experts readily available to review the annual compliance filings. Retaining such experts to ensure their availability is an additional expense that MRPs impose on stakeholders.

Finally, rather than provide specific evidence showing how MRPs have decreased stakeholder burdens, BGE states an expectation that stakeholders “will collectively learn

⁵⁹ OPC Initial Comments at 21–23; Staff Initial Comments at 8.

⁶⁰ Staff Initial Comments at 9–10.

⁶¹ PHI Initial Comments at 11–12.

. . . how to improve the efficiency of the process in order to maintain and enhance benefits while also further alleviating administrative burdens.”⁶² This is wishful thinking. In effect, BGE is asking parties to learn to live with the increased burdens MRPs impose. Passive engagement with MRPs may improve administrative efficiency, but active engagement—which effective regulation requires—does not. Without significant reforms, parties will continue being unduly burdened and overwhelmed by the effort required to effectively engage with a utility’s MRP.

F. The Exelon companies do not show how customers have benefitted from increased capital spending.

Throughout their comments, the Exelon companies declare that MRPs have enabled them to make investments that benefit customers. Yet, beyond narrative statements that MRPs have enabled utilities to “maintain and further enhance the safety, reliability, and resilience of its distribution systems,”⁶³ there is no direct evidence *showing* how customers have benefitted from the increased spending MRPs enable. The only data BGE points to that supports the benefits increased MRP spending are the “MYP Economic Impact” studies BGE attached to support both of its MRP applications.⁶⁴ Similarly, Pepco discusses the economic impact of its first MRP proposal.⁶⁵ But the accuracy of these studies—which the Commission has never referenced in an order—have never been tested or confirmed.

⁶² BGE Initial Comments at 17.

⁶³ BGE Initial Comments at 12.

⁶⁴ BGE Initial Comments at 4.

⁶⁵ PHI Comments at 18.

Economic development is ancillary to the standard of service the Public Utilities Article requires utilities to provide.⁶⁶ Any sustained increase in utility capital spending benefits utility employees and contractors and increases economic output. But customers do not pay for economic development. Customers pay for the costs to ensure safe and reliable electricity and gas service. Economic development is not relevant to whether utility rates are just and reasonable.

Beyond increased economic development, the Exelon companies do not identify any specific improvements to their quality of service that could only have been achieved with MRPs. BGE refers to achieving historic reliability during its first MRP,⁶⁷ but fails to note that its reliability performance standards for 2020–2023 were set in a separate docket one year before the Commission established the MRP Pilot.⁶⁸ In taking a critical look at MRPs, the Commission should look beyond the false syllogism that the more utilities spend, the more customers benefit.

III. If MRPs are to continue in Maryland, comprehensive reforms and regulations—not quick fixes—would be necessary before any new MRP applications are considered.

Despite the myriad concerns raised in stakeholder comments and the core focus of this Lessons Learned proceeding—whether MRPs have advanced the public interest—the Exelon companies ask the Commission to continue building the plane as it flies. BGE

⁶⁶ See PUA § 5-303 (requiring public service companies to “furnish equipment, services, and facilities that are safe, adequate, just, reasonable, economical, and efficient, considering the conservation of natural resources and the quality of the environment”).

⁶⁷ BGE Initial Comments at 12.

⁶⁸ Order No. 89056 at 20 (Case No. 9353, March 2019).

states that MRPs “can and should continue to be modified” and not “scrapped entirely.”⁶⁹ Pepco and DPL discuss how MRPs should “evolve with changing prioritization and lessons learned in implementation.”⁷⁰ In short, while the Exelon companies acknowledge that at least some improvements to the MRP construct are necessary, the companies urge the Commission to continue its experimentation with MRPs.

Assuming *arguendo* that an MRP construct could operate in the public interest—a conclusion inconsistent with Maryland’s experience—substantial reforms would be necessary to address the flaws inherent in the current construct. The Exelon companies appear to acknowledge an issue with cost containment and state they are amenable to placing a cap on the amount that can be reconciled.⁷¹ But merely implementing a reconciliation cost cap would not address the MRP’s structural problems. For MRPs to be remade in the public interest, every aspect of the current MRP construct—including, but not limited to the minimum filing requirements, the presentation of proposed MRP rates, the standard by which proposed capital and O&M budgets are evaluated, the reconciliation mechanism, the appropriate return on equity reflecting reduced risk, the content and review of utility annual compliance filings—must be reviewed. To ensure clarity, transparency, and consistency in Commission decision making, regulations governing MRPs must be promulgated.

⁶⁹ BGE Initial Comments at 23.

⁷⁰ PHI Initial Comments at 23.

⁷¹ BGE Initial Comments at 24-25; PHI Initial Comments at 23-24.

OPC does not believe the current MRP construct operates in the public interest and results in rates that are just and reasonable. If the Commission believes that MRPs in some form can be consistent with the public interest, parties should have the opportunity to file comments in a subsequent phase of this proceeding regarding potential reforms to the MRP construct. Further, unless and until reforms to MRPs are agreed upon and regulations governing MRPs are implemented, no new MRP applications should be considered.

CONCLUSION

As shown by OPC and other stakeholders' comments, the current MRP construct does not operate in the public interest. The construct encourages excessive infrastructure and O&M spending with little regard for cost-effectiveness and unduly shifts onto customers the risks historically born by the utilities, which are the entities that can mitigate those risks. Ultimately, the MRP construct favors the private interests of utility investors over the public interest in affordable rates and balanced infrastructure investment that advances State goals. In short, the MRP construct is incapable of yielding just and reasonable rates. For these reasons, the Commission should end Maryland's experiment with MRPs.

Alternatively, if the Commission believes that some form of MRP or alternative form of ratemaking can yield just and reasonable rates, potential reforms or alternatives to MRPs should be considered in a subsequent phase of this proceeding.

Respectfully submitted,

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October 4, 2024