

ORDER NO. 88022

IN THE MATTER OF THE MERGER OF
EXELON CORPORATION AND PEPCO
HOLDINGS, INC.

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9361

Issue Date: February 10, 2017

On August 19, 2016, Baltimore Gas and Electric Company (“BGE”), Potomac Electric Power Company (“Pepco”), and Delmarva Power & Light Company (“Delmarva”) (collectively, the “Companies”), submitted a filing pursuant to Merger Condition No. 5 in Order No. 86990, issued by the Public Service Commission of Maryland (“Commission”) on May 15, 2015.¹ The merger condition required that the Companies file proposals to accelerate and enhance their respective EmPOWER Maryland portfolios, as well as proposals to implement a penalty/incentive structure related to their performance with respect to Commission-approved energy efficiency goals. This matter comes before the Commission for purposes of determining the appropriate resolution to the Companies’ obligations pursuant to Merger Condition No. 5. For the reasons described herein, we deny the Companies’ August 19, 2016 proposal and instead direct certain other actions detailed below, which we find sufficient in the aggregate to demonstrate compliance with Merger Condition No. 5 stemming from the May 15, 2015 approval of the Exelon – PHI merger in Case No. 9361.

¹ ML#196802: *Filing of Baltimore Gas and Electric Company, Potomac Electric Power Company, and Delmarva Power & Light Company of EmPOWER Programs in Compliance with Merger Condition No. 5 (“Companies’ Proposal”)* (Aug. 19, 2016).

I. Background

In Order No. 86990, issued on May 15, 2015 in this proceeding, the Commission concluded, *inter alia*, that the planned investments in energy efficiency in Delmarva’s and Pepco’s Maryland service territories constitute a direct benefit pursuant to Public Utilities Article (“PUA”), *Annotated Code of Maryland* § 6-105(g)(4), and are consistent with the public interest.² The investments described in the Order include \$13.2 million in customer investment funds directed to Prince George’s County energy efficiency programs, \$18.3 million to Montgomery County, and \$11.7 million for the Delmarva Maryland service territory.³ Additionally, Delmarva and Pepco committed to not only maintain and promote existing energy efficiency and demand response programs, but to also develop, in cooperation with Staff, a set of milestones as to how they might accelerate and enhance their EmPOWER Maryland plans, including penalties for not meeting the Commission-approved goals. In Order No. 86990, we accepted this commitment as a condition to approval of the merger, and expanded it to include BGE; however, we declined to endorse any additional funding for such programs, until such time as a thorough evaluation could be made of the resulting proposal.⁴

Subsequent to the May 15, 2015 Order approving the Exelon – PHI merger, the Commission adopted statewide post-2015 electric energy efficiency goals in the EmPOWER Maryland proceeding.⁵ As a result of the new goals, Order No. 87285 directed the EmPOWER Maryland electric utilities – including BGE, Delmarva, and

² Order No. 86990 (May 15, 2015) at 56.

³ *Id.* at 54-55.

⁴ *Id.* at 53.

⁵ Order No. 87082 (July 16, 2015).

Pepco – to file proposals to achieve the incremental energy savings required in program year 2017 in conjunction with the Companies’ February 1, 2016 EmPOWER Maryland semi-annual reports.⁶ Specifically, the Companies were required to file proposals to achieve the following incremental energy savings in 2017: BGE – 36,535 MWh; Delmarva – 8,126 MWh; and Pepco – 25,786 MWh.⁷ In order to assist with the realization of these incremental energy savings, we approved several programmatic budget increases requested by the Companies in Order No. 87575, issued on May 26, 2016.

On a parallel path to these EmPOWER matters, the Companies developed proposals to accelerate and enhance their respective energy efficiency program portfolios pursuant to Merger Condition No. 5. In short, the Companies propose to fulfill their merger commitment through a combination of new programs and enhancements to existing offerings, which the Companies project would achieve a collective 21,178 MWh in incremental energy savings in 2017 at a total cost of approximately \$13.4 million across the three service territories.⁸ As described in the Companies’ filing, the proposals were shared with stakeholders in both the Case No. 9361 Exelon – PHI merger proceeding and the Case Nos. 9154 – 9156 EmPOWER Maryland dockets; although the resulting filing does not represent a consensus submission from the participating stakeholders.⁹ As an alternative to the proposals described in the filing, the Companies note that they would not oppose a determination by the Commission that its subsequent rulings of July 16, 2015 (regarding the new EmPOWER goal structure) and of May 26,

⁶ Order No. 87285 (Dec. 8, 2015) at 31.

⁷ *Id.* at 27.

⁸ Companies’ Proposal at 4.

⁹ *Id.* at 1.

2016 (regarding approvals of certain EmPOWER Maryland programmatic budget increases) satisfy Merger Condition No. 5.¹⁰

Further, as part of their August 19, 2016 proposal, the Companies provided an overview of their research regarding penalty structure designs in other jurisdictions, and while they offered a proposal regarding penalties and incentives as required by Merger Condition No. 5, the Companies opined that such a structure could result in unintended consequences. Thus, the Companies stated that they would not object if the Commission declined to adopt a penalty/incentive mechanism in the EmPOWER Maryland context.¹¹

II. Commission Decision

While we recognize the import of Merger Condition No. 5 as a commitment by the Companies to spur direct benefits to their ratepayers as a result of the Exelon – PHI merger, we find that the purpose of the condition was to ensure that the Companies remain committed to both existing energy efficiency and demand response programs, as well as to incremental future efforts to offer cost-effective energy efficiency programs in their service territories. It is a fact of the timelines associated with the Commission’s many ongoing proceedings that a degree of uncertainty existed with respect to post-2015 energy efficiency goals at the time the merger conditions were negotiated by the settling parties, since we did not issue a determination on the matter of post-2015 goals until two months after our decision in the merger proceeding. Thus, we find that the Companies’ subsequent good faith efforts to comply with post-2015 energy efficiency goals,

¹⁰ *Id.* at 11.

¹¹ *Id.* at 6-8.

including through the filing of plans and budgets intended to achieve incremental energy savings in 2017, goes a long way toward realizing the intent of Merger Condition No. 5.¹²

Additionally, we concur with the Companies that the adoption of a penalty/incentive mechanism pertaining to the achievement of Commission-approved energy efficiency goals may yield unintended consequences. Further, we note that in the event such a structure were adopted, it is our stated preference to standardize EmPOWER Maryland program components whenever practicable, which would extend to utilities outside of the instant proceeding. Therefore, we decline at this time to adopt the penalty/incentive mechanism detailed in the Companies' August 19, 2016 filing; however, we note several upcoming opportunities in which comparable performance-based incentives may be appropriately discussed. *First*, we note that Order No. 88007 in the EmPOWER dockets provided initial notice regarding an upcoming technical conference that will serve to provide a forum for stakeholders and other interested parties to discuss the development of future energy efficiency programs.¹³ *Second*, the Commission provided further guidance in Public Conference 44 ("PC 44") regarding the scope of our grid modernization proceeding, which will include work group discussions focused on innovative rate design options.¹⁴

For the aforementioned reasons, we deny the proposals outlined in the Companies' August 19, 2016 filing. We note, however, that a denial of the filing does not equate to a finding of non-compliance with Merger Condition No. 5. Rather, as

¹² Especially given that the incremental energy savings charged to the Companies as a result of Order No. 87082 (70,447 MWh) far outweigh those included in the August 19, 2016 proposal (21,178 MWh).

¹³ Order No. 88007 (Feb. 2, 2017) at 19.

¹⁴ PC44: IN THE MATTER OF TRANSFORMING MARYLAND'S ELECTRIC DISTRIBUTION SYSTEMS TO ENSURE THAT ELECTRIC SERVICE IS CUSTOMER-CENTERED, AFFORDABLE, RELIABLE AND ENVIRONMENTALLY SUSTAINABLE IN MARYLAND, (Notice issued on Jan. 31, 2017).

stated previously, it is our determination that the Companies' good faith efforts and actions in the EmPOWER Maryland proceedings (Case Nos. 9154 – 9156) demonstrate substantial compliance with the intent of Merger Condition 5. However, we further require the Companies to provide guidance to Prince George's and Montgomery Counties, upon the Counties' request, regarding the structuring and implementation of energy efficiency programs stemming from the customer investment funding authorized as a condition to the Exelon – PHI merger, given that incremental energy efficiency opportunities in the Pepco service territory will be effectuated through these opportunities. Therefore, based on the Companies' EmPOWER Maryland activities subsequent to our merger order, coupled with this additional directive pertaining to guidance for the Counties, we find that the Companies have sufficiently demonstrated compliance with Merger Condition No. 5, and thus we require no further filings with respect to this item.

IT IS THEREFORE, this 10th day of February, in the year Two Thousand Seventeen, by the Public Service Commission of Maryland,

ORDERED: (1) That the August 19, 2016 proposal of BGE, Delmarva, and Pepco regarding the acceleration and enhancement of their EmPOWER Maryland portfolios, as well as an accompanying penalty/incentive mechanism, is hereby denied; and

(2) That the actions taken by BGE, Delmarva, and Pepco in the EmPOWER Maryland proceedings, in conjunction with the additional actions required herein,

constitute compliance with Order No. 86990, Merger Condition No. 5.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Jeannette M. Mills

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell
Commissioners