



An Exelon Company



An Exelon Company

February 16, 2021

112 West Street
Annapolis, MD 21401
410-269-7115

Oppose Senate Bill 506

Senate Bill 506 – Public Utilities Regulatory Assets - Prohibition

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) oppose **Senate Bill 506 – Public Utilities Regulatory Assets - Prohibition**. Senate Bill 506 prohibits a public service company from receiving a rate of return on a regulatory asset created as a result of conditions addressed by a state of emergency as declared by the Governor in accordance with the provision of law.

As drafted, Senate Bill 506 could be interpreted to apply not only to the COVID-19 regulatory asset, but also regulatory assets established in response to future major storms (i.e. hurricanes, derechos) and other states of emergency. Regulatory assets benefit utility customers by smoothing out cost increases due to storm response or other emergencies like the current pandemic. A regulatory asset is often recovered over multiple years vs. immediately in order to minimize customer impact. The Public Service Commission (PSC) has authority to approve or deny a return on the costs in a regulatory asset, based on case-specific facts. The PSC is charged with reviewing all of the components of a regulatory asset and given the expertise of the PSC, is rightly charged with making a case by case evaluation. In fact, in BGE's most recent rate case order, the Commission would not allow some costs BGE proposed in its COVID-19 regulatory asset and the Company was not able to earn a return on those costs. This demonstrates appropriate Commission oversight and evaluation of that regulatory asset.

The rate of return on a regulatory asset does not necessarily reflect profit. In fact, in a regulatory asset, the rate of return often reflects the cost of "loaning" the money to cover the cost of the asset. The arrearages included in the COVID-19 regulatory asset are essentially interest free loans to customers and the Rate of Return will help to compensate the company for the use of those funds, similar to an interest rate on a mortgage.

In two recent orders on the subject, the PSC confirmed the logic supporting the recovery of COVID-19-related expenses through a regulatory asset. Relevant provisions include:

- a. In response to the significant financial implications that utilities could face in complying with emergency orders related to COVID-19, the Commission authorized the utilities to create a regulatory asset to record the incremental costs related to COVID-19 prudently incurred to ensure that Maryland residents have essential utility services. The Commission additionally found that deferral of such*

costs is appropriate because the current catastrophic health emergency is outside the control of the utilities and is a non-recurring event. (BGE MYP Order 89678)

- b. The Commission acknowledges the potential for significant financial implications that compliance with these emergency orders may have on Maryland Utilities and service providers. Consequently, in light of the extraordinary circumstances and in an effort to minimize adverse financial impacts to Maryland Utilities, the Commission authorizes each Utility to create a regulatory asset to record the incremental costs related to COVID-19 prudently incurred beginning on March 16, 2020, by the Utility to ensure that Maryland residents have essential utility services during this period.1 The Commission finds that the creation of the regulatory asset for COVID-19-related expenses will facilitate the recovery of those costs prudently incurred by the Utilities in their efforts to serve customers during this period, and the Commission finds that deferral of such costs is appropriate because the current catastrophic health emergency is outside the control of the Utility and a non-recurring event. (Regulatory Asset Order 89542)*

No other jurisdiction that we are aware of across the United States has blanketly prohibited utility recovery of emergency-related (i.e., COVID) costs. Although various jurisdictions have deliberated on the type and magnitude of emergency costs recoverable by utilities, no jurisdictions have made a determination that overarchingly restricts utilities from recovery of all COVID-related or other “emergency” costs.

The return on the regulatory asset is intended to make the utility whole not produce a profit for the utility. Utilities incur borrowing costs to provide their essential services. It would be unfair to require the utilities to finance these costs at their expense. Moreover, in its review of such costs in base rate cases, the PSC will assess and determine if the costs were prudently incurred and provided a benefit to customers.

Any legislative provision that precludes a utility from recovering its actual prudent costs, including the cost of capital (or money), violates the regulatory compact that has been in place for many years. This creates uncertainty and will be viewed negatively by rating agencies, directionally impacting the cost of borrowing. No other states have proposed such punitive actions as a result of the COVID pandemic, and Maryland should not be the first to do so.

For the above reasons, Pepco and Delmarva Power respectfully request and unfavorable vote on Senate Bill 506.

Contact:

Katie Lanzarotto
Senior Legislative Specialist
202-428-1309
Kathryn.lanzarotto@exeloncorp.com

Ivan K. Lanier
State Affairs Manager
202-428-1288
Ivan.Lanier@pepco.com