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February 29, 2024

112 West Street
Annapolis, MD 21401

Oppose – House Bill 864: Energy Efficiency and Conservation Plans

Potomac Electric Power Company (Pepco) and Delmarva Power & Light Company (Delmarva Power) respectfully oppose **House Bill 864: Energy Efficiency and Conservation Plans.** While we understand there will be agency amendments offered for consideration, as drafted, House Bill 864 requires each electric company, each gas company, and the Department of Housing and Community Development to develop a plan for achieving energy efficiency, conservation and greenhouse gas emissions reduction targets through certain programs and services, superseding certain existing energy efficiency and conservation goals. The legislation also requires the Public Service Commission (PSC) to establish and determine certain greenhouse gas emissions reduction targets and adopt rate-making policies that provide, through a surcharge full cost recovery of reasonably incurred costs for programs and services, including full recovery on a current basis. Finally, on or before December 31, 2032, all unpaid costs and unamortized costs that existed on December 31, 2024, or were incurred before January 1, 2028, and were accrued for the purpose of achieving targets for energy savings must be paid in full.

In 2008, the General Assembly passed the EmPOWER Maryland Energy Efficiency Act, which set target reductions of 15% in per capita electricity consumption and peak demand, respectively, by 2015 from a 2007 baseline. Legislation in 2017 extended the program through its 2018-2020 and 2021-2023 program cycles and established a new annual energy savings goal of 2.0% per year, based on each electric company's 2016 sales. Since the enactment of the original EmPOWER legislation, the program has been an effective tool for incentivizing energy efficiency and other customer and environmental benefits. Moving forward, if properly structured, EmPOWER can meaningfully assist the state in achieving its ambitious decarbonization goals to reduce greenhouse gas emissions by 60% by 2031 and achieve net zero by 2045.

In December 2022, the PSC issued Order No.90456 requiring that all unamortized EmPOWER program costs and interest as of December 31, 2023 be paid for in full by the completion of the 2027-2029 EmPOWER program cycle. The order also required a change in future cost recovery to gradually move to full expensing of costs.

Additionally, on December 29, 2023, the PSC issued an order authorizing the transition to the next three-year program cycle for EmPOWER Maryland and approved various proposals by the program administrators to implement new energy efficiency programs for the 2024-2026 program cycle, as well as continue operating core programs, subject to conditions. The Commission also approved several new pilots and enhancements to the suite of energy efficiency programs.

Pepco and Delmarva Power oppose this legislation as drafted, because the prescriptive nature of this legislation does not allow the PSC, through a transparent regulatory process, the flexibility and discretion to review and analyze program designs offered by the utilities to ensure cost-effectiveness and affordability for Maryland utility customers. The PSC has already implemented a new cost recovery methodology for the 2024-2026 EmPOWER Maryland program cycle in order to eliminate the balance of EmPOWER funds that have not yet been collected and shorten the timeframe during which a utility may recover operating costs.

It also should be noted that the PSC's order issued in December 2023 directed a Cost Recovery Work Group to convene to determine if there is an improved method for balancing the shift to an expense model given rising program costs and increased surcharges. The PSC directed that work group to file a status report on its findings by April 15, 2024, a final report with recommendations by July 1, 2024, and directed the utilities to respond to the final report by August 1, 2024.

Finally, via an amendment added on the House floor in the 2023 legislative session that Pepco and Delmarva Power did not have an opportunity to discuss with members and other key stakeholders, House Bill 864, as introduced, requires any unpaid costs and unamortized costs related to the EmPOWER program to earn no more than each electric or gas company's average cost of outstanding debt. Utilities do not finance their operations solely on debt, rather a combination of debt and equity and the return allowed to utilities through the regulatory process should reflect that reality. Neither the capital markets, nor the PSC, should be in favor of having a utility highly leveraged in debt as this decreases the stability of the utility and the utility's financial health, all of which can lead to increased costs to finance operations. The utilities have already made and paid for the investments that have created the unpaid and unamortized balances impacted by this provision of House Bill 864, under the premise that the utility would earn the rate of return approved through the regulatory process. If the House Bill 864 were to pass as drafted, this would create a demonstrated loss for the utility and an unconstitutional taking.

As we consider all tools in the toolbox to meet Maryland's aggressive greenhouse gas reduction targets, including an equity and affordability lens to the analysis is imperative. Pepco and Delmarva Power believe the PSC should have flexibility and discretion to look at and analyze program designs offered by the utilities to ensure cost-effectiveness and affordability. For the reasons stated, Pepco and Delmarva Power respectfully request an unfavorable report on House Bill 864.

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