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BILL NO.: House Bill 864 – Energy Efficiency and Conservation Plans  
COMMITTEE: Education, Energy, and the Environment Committee  
HEARING DATE: March 21, 2024  
SPONSORS: Delegates Crosby and Qi  
POSITION: Favorable

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The Office of People’s Counsel (“OPC”) supports House Bill 864, which would deliver economic benefits and provide both accountability and transparency for Maryland utility customers while updating the EmPOWER program to better serve Maryland’s greenhouse gas (“GHG”) reduction goals.

HG 864 would advance the interests of utility customers by ensuring the elimination of the massive unamortized balance from which the utilities have been profiting—at great cost to customers—and a transition to a full expensing model. Full expensing, i.e., recovering costs in the year they are incurred, is what most states require for energy efficiency programs because capitalizing program costs (or putting them into rate base) to pay them over time increases utility profits and significantly raises program costs—much like using a credit card to pay a regular recurring expense. HB 864 would codify an end to this unsound financial practice.

HB 864 would serve to hold utilities accountable for their EmPOWER goal achievement. Instead of the current practice, by which utilities earn returns even if they fail to meet their statutorily mandated goals, HB 864 would allow for both penalties and financial incentives for investor-owned utilities that are directly linked to goal achievement. The bill would also ensure that EmPOWER continues to primarily serve customers through “behind-the-meter” programs, or those that impact the customer side of the utility meter.

HB 864 would provide for transparency by requiring that behind-the-meter programs be charged to customers through a surcharge line item on utility bills,

instead of, as stated by the Commission in 2022 when it denied a proposal to include these costs in base rates, “embed[ding] the EmPOWER program costs in base rates, effectively hiding the cost and presence of the program in distribution rates and to the benefit of no one.”<sup>1</sup>

EmPOWER programs have historically provided Maryland ratepayers with a wide array of energy-saving—and energy bill reducing—benefits. Instead of requiring utilities and the Department of Housing and Community Development (“DHCD”) to meet energy savings goals, measured in megawatt hours, HB 864 would modify the EmPOWER program to require the utilities and DHCD to meet GHG reduction goals. The bill’s establishment of GHG reduction goals will remove barriers to both electrification and the prioritization of fuel-switching. HB 864 would also require the utilities and DHCD to include beneficial electrification in their EmPOWER plans, which will help customers transition away from the use of fuel oil, propane, and natural gas to efficient electric systems.

It is imperative that the EmPOWER statute evolve to meet the needs of utility customers while advancing Maryland’s climate policy goals.

## **Background**

The EmPOWER statute was enacted in 2008 through the passage of the Maryland Energy Efficiency Act. The legislature found that “energy efficiency is among the least expensive ways to meet the growing electricity demands of the State”<sup>2</sup> and established requirements for Maryland’s programs that promote energy efficiency and conservation. Energy efficiency provides direct benefits to customers by saving them money on their gas and electric bills and also helps reduce greenhouse gas emissions from the generation of energy.

The EmPOWER statute currently mandates that electric companies reach specific energy savings targets, measured in megawatt-hours (“MWh”). Gas companies do not have statutorily mandated targets. Until last year, programs for limited-income ratepayers,<sup>3</sup> administered by DHCD, did not have statutorily

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<sup>1</sup> Maryland Public Service Commission, *Order No. 90456* (Case No. 9648, December 29, 2022). This document can be found at <https://webpsc.psc.state.md.us/DMS/maillogsearch> by performing a search for MailLog number 300652.

<sup>2</sup> Md. Code Ann., Pub. Util. § 7-211(b)(1).

<sup>3</sup> For purposes of DHCD’s EmPOWER programs, limited-income residential households are currently considered to be those that earn either 250% or less of the Federal Poverty Level (“FPL”) on an annual basis, or 80% of Area Median Income (“AMI”), whichever is higher (or whichever was used to qualify the individual through another, outside program). For multi-family buildings, the income threshold is 80% AMI. More information is available here: <https://dhcd.maryland.gov/Residents/Pages/lieep/default.aspx>.

mandated targets. This changed last year with the passage of HB 169. DHCD now has statutorily mandated energy savings targets.<sup>4</sup>

A Public Service Commission Work Group, the Future Programming Work Group, began meeting in 2021 and was charged with evaluating multiple topics regarding the next cycle of EmPOWER. The work group was widely attended by stakeholders, including the utilities, OPC, Commission Technical Staff, the Maryland Energy Administration, DHCD, Maryland Energy Efficiency Advocates, as well as other governmental agencies and organizations, including trade organizations, all of whom have a stake in the EmPOWER process. In the spring of 2022, the work group recommended that EmPOWER transition from MWh reduction goals to a GHG reduction goal.<sup>5</sup> The passage of the Climate Solutions Now Act of 2022, which sets GHG reductions goals for Maryland to mitigate climate change, further highlighted the importance of this transition. After the enactment of the CSNA, the Commission agreed with the work group that EmPOWER should transition to a GHG reduction target and—based on its view that it could not do so without changing the EmPOWER statute—recommended that the General Assembly change the target.<sup>6</sup>

The Commission released its GHG Abatement Potential Study in December 2022.<sup>7</sup> The study demonstrated that EmPOWER programs have enormous potential to reduce, in a cost-effective manner, GHG emissions in Maryland.<sup>8</sup> The study further demonstrated a significant opportunity for cost-effective fuel-switching from fossil fuel end-uses to efficient electric heat pump technology.<sup>9</sup>

Legislation that would have transitioned the EmPOWER program to a GHG reduction goal failed to pass in the 2023 legislative session.

The Commission ordered the EmPOWER utilities to model various levels of GHG reductions, based on the results of the GHG Abatement Potential Study. After

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<sup>4</sup> Md. Code Ann., Pub. Util. § 7-211(b)(1).

<sup>5</sup> Maryland Public Service Commission, Public Utility Law Judge Division, *Future Programming Work Group Report* (Case No. 9648, April 15, 2022) at 1. This report can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 240203.

<sup>6</sup> Public Service Commission of Maryland, *Recommendations on the Future of EmPOWER Maryland* (July 1, 2022) at 5, [https://www.psc.state.md.us/wp-content/uploads/EmPOWER-Recommendations-to-General-Assembly\\_Final.pdf](https://www.psc.state.md.us/wp-content/uploads/EmPOWER-Recommendations-to-General-Assembly_Final.pdf).

<sup>7</sup> Applied Energy Group, *Maryland GHG Abatement Study – Final Results* (Case No. 9648, December 8, 2022). This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300426.

<sup>8</sup> Maryland Office of People’s Counsel, *Office of People’s Counsel Comments on The Greenhouse Gas Abatement Potential Study* (Case No. 9648, December 30, 2022) at 2. This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300687.

<sup>9</sup> *Id.* at 2.

accepting stakeholder comments and holding a hearing, the Commission ordered revised goals for the EmPOWER utilities on December 29, 2023.<sup>10</sup> However, as noted above, the EmPOWER statute’s current energy savings goal continues to stymie efforts, in part, to prioritize fuel-switching from fossil-fuel end uses to efficient electrification under EmPOWER.

### Comments

OPC strongly supports HB 864’s goal of updating the EmPOWER statute to advance customer interests and ensure consistency with Maryland’s climate goals.

The bill will advance the interests of residential utility customers through accountability and transparency. HB 864 protects utility customers by requiring the paydown of EmPOWER’s unamortized balance—on which the utilities currently earn returns—and transitioning to an all expense program model. In 2017 the American Council for an Energy-Efficient Economy (“ACEEE”) noted that capitalization “is no longer the preferred method of cost recovery” for energy efficiency expenditures.<sup>11</sup> ACEEE went on to caution that “capitalization spreads out cost recovery over an extended period, raises the total cost of efficiency programs, and allows a return on capitalized program costs that is not tied to program performance.”<sup>12</sup> HB 864 instead allows for reasonable financial performance incentives and penalties for investor-owned utilities. The utilities currently earn significant profits without regard for whether they meet their statutorily mandated goals. This change encourages accountability for the investor-owned utilities’ use of customer funds.

Additionally, HB 864 requires the inclusion of beneficial electrification in plans to achieve GHG reductions. Requiring beneficial electrification programs will save customers money on their utility bills. A study by Energy + Environmental Economics (E3) for the Maryland Commission on Climate Change found that electrification of residential homes—including the replacement of “almost all fossil fuel heaters with heat pumps in existing homes by 2045” and the construction of new buildings without fossil fuels—was the lowest cost pathway to meet the State’s climate goals.<sup>13</sup> The E3 study is confirmed by analyses by OPC and other entities.

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<sup>10</sup> Maryland Public Service Commission, *Order No. 90957* (Case No. 9705, December 29, 2023). This order can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 306928.

<sup>11</sup> American Council for an Energy-Efficient Economy (ACEEE), *Aligning Utility Business Models with Energy Efficiency* (November 27, 2017) <https://www.aceee.org/toolkit/2017/11/aligning-utility-business-models-energy-efficiency>.

<sup>12</sup> *Id.*

<sup>13</sup> MCCC, *Building Energy Transition Plan: A Roadmap for Decarbonizing the Residential and Commercial*

Bill provisions would also require the utilities to promote federal and state rebates and tax credits for energy efficiency and non-fossil-fuel powered appliances, helping to leverage outside sources of funding to maximize the use of both customer funds and EmPOWER funds.

HB 864 also conforms the EmPOWER program to the recommendations made by EmPOWER’s Future Programming Work Group, described above, to change the existing statute’s energy savings goals to GHG reduction goals. This change is important to supporting electrification that is beneficial to residential customers, as well as the State’s efforts to meet its climate goals. Electrification can cause electric consumption to rise—even as gas consumption declines—while lowering customer bills and reducing overall GHG emissions.

It is important that EmPOWER continues to focus on primarily behind-the-meter programs. The GHG Abatement Potential Study focused entirely on behind-the-meter programs and found significant opportunities for GHG reductions.<sup>14</sup> HB 864 would require that at least 80 percent of the GHG emissions reductions that count towards the utilities’ goal achievement come from behind-the-meter programs, which OPC supports.

**Recommendation:** OPC requests a favorable report from the Committee on HB 864.

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*Building Sectors in Maryland* (November 2021) at 4, <https://mde.maryland.gov/programs/air/ClimateChange/MCCC/Commission/Building%20Energy%20Transition%20Plan%20-%20MCCC%20approved.pdf>

<sup>14</sup> Maryland Office of People’s Counsel, *Office of People’s Counsel Comments on The Greenhouse Gas Abatement Potential Study* (Case No. 9648, December 30, 2022) at 11. This document can be found at <https://webpsc.psc.state.md.us/DMS/mailllogsearch> by performing a search for MailLog number 300687.