BEFORE THE
MARYLAND PUBLIC SERVICE COMMISSION

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IMPACTS OF COVID-19 PANDEMIC ON MARYLAND'S GAS AND ELECTRIC UTILITY OPERATIONS AND CUSTOMER EXPERIENCES	*	**Administrative Docket PC53**
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COMMENTS OF

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NRG Energy Inc. ("NRG") is a major retailer of electricity and natural gas, as well as a vendor of energy services including electric power generation, demand response, and brokerage, among others. NRG's operating companies are exposed to the churn of the economic cycle in Maryland and across the United States, including at this tumultuous moment in our nation's history. NRG also takes an interest in the proper regulation of the markets in which it participates. These comments are respectfully submitted in response to the Commission's request for non-utility stakeholder comments in Administrative Docket PC53 ("Impacts of COVID-19 on Maryland's Gas and Electric Utility Operations and Customer Experiences").

The comments of NRG focus on the comments of BG&E, the two Pepco companies, and Potomac Edison, which together constitute the investor-owned electric utilities that have filed comments in this proceeding. No position is offered regarding other utilities. In so replying, NRG also responds to Question 8 posed in the Commission's notice, which inquires about the actions the Commission should take in mitigating and monitoring the impacts of COVID-19 on utilities and ratepayers.[1]

I. Introduction

The Commission should expect utilities to participate on equitable terms in the economic lifecycle of the state and its citizens. That is too often not the reality for investor-owned utilities, including Maryland's four electric ones. As Exelon reported to investors in its recent second-quarter earnings, Maryland's largest utility, Baltimore Gas & Electric ("BG&E"), had profits from April to June 2020 "relatively consistent with the second quarter of 2019," noting that "earnings are not affected" by customer usage patterns.[2] From a utility investor perspective, it is as if the largest economic disruption in recent American history has not even been happening. Utilities operate under an assumption that they will be made whole because regulators too often allow them to be made whole, even at times when ordinary businesses everywhere are struggling

[1] Notice of Public Conference on the Impacts of the COVID-19 Pandemic, Administrative Docket PC53, (July 8, 2020)

[2] "Exelon Reports Second Quarter 2020 Results," (Aug. 4, 2020), p. 2. https://www.exeloncorp.com/company/Documents/Q2%202020%20Earnings%20Release%20and%20Attachments.pdf

with depressed sales volumes, increasing customer bad debt (or "uncollectible expense" in accounting parlance), or both.

The COVID-19 pandemic and its record level of unemployment and business closures is not a reason for regulators to intervene on behalf of these utilities' shareholders. No evidence submitted in this proceeding indicates that the financial or operational wherewithal of Maryland's regulated utilities has been impaired, affecting their ability to offer reliable service. Indeed, the only weakness these utilities have lately experienced in their market performance relates to investors' reaction to major public corruption scandals that have implicated Exelon and FirstEnergy in Illinois and Ohio, respectively.

NRG recommends the Commission take the following steps:

- Terminate the regulatory assets these utilities have been recording, unless and until the utilities have demonstrated they are necessary.
    - In the alternative, the regulatory assets should be modified by limiting them to foregone late-payment and service fees, which has the positive result of not insulating utilities and retail suppliers from the economic impacts of COVID-19 to the detriment of customers.
- Suspend the Bill Stabilization Adjustment tariffs as they apply to fluctuations in sales volumes during the course of the COVID-19 pandemic.

II. The Creation of 'Regulatory Assets' is Inappropriate, and They Should be Terminated until Proven Necessary

The treatment that the Commission authorized in Order No. 89542 allows these utilities to establish a "regulatory asset" associated with the incremental costs borne of the COVID-19 pandemic.[3] This issuance fits into a class of "accounting orders" that typically are issued only when expenses are "unusual, unexpected, and would not be expected to recur or be recurring

[3] Order No. 89542, Case No. 9639 (Apr. 9, 2020).

factors in the normal operations of business."[4] This style of deferred accounting "is not in keeping with the general principles of ratemaking and should be used sparingly on those rare occasions when clearly justified."[5] In addition to expenses' being unusual and nonrecurring, which as the COVID-19 pandemic continues they do not precisely seem to be, expenses traditionally must be "material" to qualify for deferral in a regulatory asset. State utility regulators usually have accepted the view that 5 percent of income is a proper yardstick to measure materiality, consistent with the Uniform System of Accounts.[6] To date, there has been no attempt to fit authorization for deferred accounting within the two-part rubric that public utility regulation has traditionally employed. Some commissions hold fully litigated proceedings before ruling on deferred accounting, placing the burden on regulated utilities to make this demonstration. Taking a step back now that the COVID-19 pandemic and its attendant economic situation have unfortunately gelled into a new normal, that is what should also happen here.

A. 'Regulatory Assets' are an inequitable regulatory solution in the context of the COVID-19 pandemic

There are at least three good reasons not merely to assume that deferred accounting should apply in this situation. First, as a general rule of public utility regulation, utilities should be treated like any other business and bear the rise and fall of expenses and revenues outside of their rate-setting intervals—because they, rather than customers, have accepted this variation as a risk of doing business in exchange for a substantial reward.

Second, it is difficult if not impossible to track individuated, sometimes offsetting cost elements that may have been precipitated by the same or related events. The utilities commenting in this proceeding unwittingly allude to two examples of this. In one example, Potomac Edison notes it issued new long-term debt.[7] COVID-19 has spurred the return of aggressive Federal Reserve policies that reduce the cost of capital. The utility issued this debt in late June, after

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[4] *In the Matter of Application by Virginia Elec. & Power Co., d/b/a/ Dominion N. Carolina Power, for Approval of Amended Schedule*, No. E-22, Sub 517 at 10 (Mar. 29, 2016), citing the Uniform System of Accounts which is also adopted by this Commission for regulation of the utilities here in question.
[5] *Id.*
[6] 18 CFR Part 101, General Instruction 7 "Extraordinary Items".
[7] "[O]n June 29, 2020, Potomac Edison issued $175 million of new long-term debt. The proceeds of the issuance were used to refinance short-term borrowings, to fund capital expenditures, and for other general corporate purposes." Comments of Potomac Edison (Aug. 11, 2020), p. 8.

those precipitous reductions in borrowing rates occurred. This suggests an overall lower cost of capital. Of course, this likely lower expense nowhere is reflected in the regulatory asset.

In a similar vein, BG&E offers that it "is not changing its overall full-year capital and operational budgets"— a claim notable in its phrasing, since it avoids asserting that it has actually spent at budget and implies it is under-budget.[8] The reality of COVID-19 is that even many essential businesses have seen less employee travel, fewer contractors hired, and much non-urgent maintenance and operations deferred. Yet, again, these likely cost savings nowhere appear in this utility's regulatory asset as presented to the Commission in its comments in this proceeding. Utility customers, paying rates sufficient to fund an op-ex budget, will not get a refund if it is indeed not spent at the end of the year. It is for this reason, among others, the Indiana Utility Regulatory Commission rejected Indiana utilities' joint request for deferred accounting treatment of such costs.[9] These two examples point to a key problem with the kind of deferred accounting in question: It always seem to flow in one direction, to the benefit of the company's shareholders. This is why full rate cases, and not targeted accounting orders, are the preferred mode of regulation when and if the circumstances of the economy or the cost structure of a regulated firm change substantially in a way that may be long-lasting.

Third and finally, NRG suggests that of all the people affected by COVID-19, regulated utilities fall relatively low on the list of those necessitating the intervention of government. Simply put, it would be unjust to stage an unusual regulatory intervention—one whose costs inevitably fall on the utility's customers—at this time.

B. The Commission should not improperly prejudge important policy issues associated with COVID-19 and should restore the burden of proof to regulated utilities to demonstrate that the creation of 'regulatory assets' is appropriate

It is understandable, as COVID-19 began raging, that the Commission would issue Order No. 89542 as a precautionary measure. Occasionally, commentators will justify an accounting order as a measure that is merely preliminary, is in no way dispositive of important questions of

[8] Comments of the Baltimore Gas and Electric Company ("BG&E") (Aug. 11, 2020), p. 22.

[9] *In re: Verified Joint Petition of Duke Energy Indiana et. al.* and *Petition of Indiana Office of Utility Consumer Counselor for Generic Investigation into COVID-19 Impacts*, consolidated, Indiana Utility Regulatory Commission, Cause No. 45380, Interim and Emergency Order (June 29, 2020), ("Indiana Order"). Available online at: https://www.in.gov/iurc/files/45380Phase1_ord_062920.pdf

regulation, and which can always be modified when the regulatory asset is set to rates in a ratemaking proceeding. This understanding is predicated on a misunderstanding of relevant accounting regulations.

Generally Accepted Accounting Principles ("GAAP") that govern the firms the Commission regulates are presently codified in in the Accounting Standards Codification ("ASC"). ASC 980-340-25-1 ("Recognition of Regulatory Assets") provides the financial regulation that governs "regulatory assets." It reads in its entirety:

> 25-1 Rate actions of a regulator can provide reasonable assurance of the existence of an asset. An entity shall capitalize all or part of an incurred cost that would otherwise be charged to expense if both of the following criteria are met:
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> a. It is **probable** (as defined in Topic 450) that future revenue in an amount at least equal to the capitalized cost will result from inclusion of that cost in allowable costs for rate-making purposes.
>
> b. Based on available evidence; **the future revenue will be provided to permit recovery of the previously incurred cost rather than to provide for expected levels of similar future costs**. If the revenue will be provided through an automatic rate-adjustment clause, this criterion requires that the regulator's intent clearly be to permit recovery of the previously incurred cost.
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> A cost that does not meet these asset recognition criteria at the date the cost is incurred shall be recognized as a regulatory asset when it does meet those criteria at a later date. [emphasis added][10]

Put simply, it is not possible for the Commission and regulated utilities to create a "regulatory asset" without prejudging that it is "probable" pursuant to ASC 980-340-25-1 the utility will be allowed to collect the incremental costs it records in the account. On the contrary, if a regulator claimed that an accounting order did not constitute any judgment on the probability of recovery, the regulated party would be obliged by GAAP to *not* record a "regulatory asset." That is not what has happened here. It is inappropriate for the Commission to reach this judgment, even if it has done so only by implication, without a showing by a utility that it meets the traditional regulatory standards for the creation of a regulatory asset—a showing that has nowhere been made. Likewise, relevant to subsection (b) of the relevant section of ASC set forth

[10] The ASC is available on a subscription basis. A major accounting firm has excerpted part of this regulation a publicly available report, however. *See* Deloitte, "Covid-19 accounting and reporting considerations for power, utilities, and renewables," (2020) p. 7. Available online at: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/covid19-accounting-and-reporting-considerations.pdf

above, the Commission in authorizing the creation of a regulatory asset also prejudges that it is more appropriate to authorize a surcharge for incremental 2020 expenses, rather than using 2020 as part of the test-year regulation for setting new rates that apply in future intervals when the same costs have some likelihood of being present.

C. The 'regulatory assets' described in utility comments in this proceeding should be ordered terminated, subject to further proceedings

As described above, strong arguments exist against a presumption for deferred accounting, which is meant to be an exceptional departure from ordinary practice. At the very least, utilities should bear the burden of demonstrating that a regulatory asset should be established—which they have not done (or been expected to do). The process followed by the Indiana Commission is instructive. There, the Commission acknowledged that an accounting order "carried with it a presumption of cost recovery" and held utilities to the burden of demonstrating the relief of one was appropriate, ultimately rejecting a number of their requests.[11] This Commission should for the moment take a step back, terminate the regulatory assets that utilities have recorded, and offer those utilities an opportunity to petition the Commission individually with facts that support any exceptional accounting request they might make while bearing the burden of proof.

III. If the Commission Continues to Authorize 'Regulatory Assets,' They Should be Limited in Scope and Subject to Consistent Standards

There is significant ambiguity in what utilities are recording in their "regulatory asset" accounts. This should be remedied through consistent reporting. Additionally, the Commission should exclude certain costs from the "regulatory asset" if they are allowed to persist at all.

A. The 'regulatory assets' that utilities have created remain non-transparent and ambiguously employed

Potomac Edison appears to have recorded a regulatory asset that is on a per-customer basis almost double the size of BG&E's—which Potomac Edison spends a total of three sentences

[11] Indiana Order, p. 8.

explaining, and for which it provides no itemization.[12] Meanwhile, the Exelon companies note that arrearages have essentially doubled; these evidently have not, but may eventually be, recorded in the companies' regulatory assets.[13]

If the Commission permits the regulatory assets to exist without limitation, it risks creating a moral hazard on the part of regulated utilities that will gradually come to expect that these balances will be socialized to their customer base. (This, as described above, is consistent with the expectation embedded within the text of the relevant financial regulation governing regulatory assets.) While these regulatory assets are today relatively small, they are poised to grow substantially. For example, BGE has recorded only $2.4 million in incremental bad debt in the regulatory asset, while $44 million in increased arrearages have been recorded in a mere three-and-a-half-month period.[14] The latter, much larger figure has not been incorporated into the regulatory asset because BG&E does not treat uncollected arrearages as an incremental cost until they are written off as bad debt, which it does only seven months after the termination of service.

These costs are poised to be the largest at play as it relates to COVID-19. Yet, even after the utilities' filings in this proceeding, it is not clear Maryland's FirstEnergy utility is drawing the same delineation between arrearages and bad debt as the state's Exelon companies. Potomac Edison does not describe its practice at all. BG&E describes its accounting treatment in a footnote, while Pepco and Delmarva seemingly adhere to the same treatment as their Exelon affiliate without directly describing it.[15]

Additionally, the Exelon companies' stated internal accounting practices make clear that a regulatory asset should *not* exist for the incremental uncollectible expense. The Exelon companies' internal accounting practices do not acknowledge an incremental expense until at least seventh months after non-paying customers are disconnected. Since the utilities propose to resume disconnections later this year, the earliest any further of these expenses would be even

[12] A cumulative $3.2 million and $13.5 million in regulatory assets have been recorded according to Potomac Edison and BG&E with respect to their approximately 265,000 and 2,000,000 Maryland customers, respectively. *Compare* Comments of Potomac Edison, p. 10, to Comments of BG&E, pp. 22-23.
[13] BG&E observes "BG&E's policy is that customer accounts generally move to an 'uncollectible' status seven months after the account is closed through the voluntary or involuntary stoppage of distribution service." Comments, p. 22, fn 4.
[14] Comments of BG&E, p. 22.
[15] Comments of BG&E, p. 22, fn 4. Comments of Pepco Holdings, (Aug. 11, 2020), p. 19.

booked as bad debt expense would be the middle of 2021. Given the Exelon companies' internal accounting practices, it is not clear why the continued establishment of a regulatory asset now for these costs is necessary. As related above, deferred accounting exists for costs that are unexpected and nonrecurring. Yet, here, eventual incremental uncollectible expense as the Exelon companies define *is* expected in the future; additionally, the actual amount of it is today unquantifiable, because the figure depends on the utilities' ability or willingness to collect arrearages and customers' ability or willingness to pay those balances. In any case, the utilities have ample time either to file a rate case, or to present a more robust presentation of the nature and design of a regulatory asset. Continuing a regulatory asset for these costs now would be inappropriate by the standards that traditionally govern deferred accounting.

B. Foregone late fees and incremental bad debt are interrelated costs, and should not both be included in a 'regulatory asset,' if deferred accounting is permitted

There are important interdependencies in the utility cost structure that should be considered in the application of deferred accounting. Doing so would ensure that an eventual "double recovery" does not occur, and that equity is maintained between all market participants engaged in the supply of energy to end-use customers.

Specifically, utilities collect fees associated with late payments and service applications. BG&E expected to earn $6.2 million on these fees alone through the end of June—a substantial sum of money that is nearly half its recorded regulatory asset.[16]

The revenue a utility normally earns through these late payment charges do not have a natural, corresponding cost. Compare, for example, a tracker mechanism that is designed to set rates to raise revenue to offset costs that a utility pays to third parties. Here, by contrast, the revenue associated with late fees has only a more ambiguous set of corresponding costs. One may take as guidance on this point the ratemaking the Commission engages in when it sets the Purchase of Receivables ("POR") discount rate that applies to the assumption of charges of competitive third-party suppliers. In that process, the *revenue* raised through the collection of late-payment fees offsets the *cost* of bad debt of shopping customers. As demonstrated in Table 1, there are a number of occasions where the revenue of the late-payment fees even *exceeds* the

[16] Comments of BG&E, p. 23.

total bad debt, which pursuant to the Commission's ratemaking orders results in a rate of zero (rather than a negative discount rate). Indeed, for BG&E, *all* discount rates are negative and set to zero for ratemaking, indicating that the utility takes in more revenue in late fees than it loses in uncollectible expense associated with these customers.

Table 1: Utility Purchase of Receivables Discount Rates (%) – Effective June 2020[17]

Utilities	Residential	Type I	Type II	Hourly-Priced
BG&E	0	0	0	0
Pepco-MD	0.1408	0.0089	0	0
Delmarva-MD	2.1453	0	0	0
Potomac Edison	0.3435	0	0	0

Consequently, if a utility were allowed to collect *both* the foregone revenue of fees *and* the incremental uncollectible expense, it would appear to set the utility up for a double collection at least in some circumstances. This is inappropriate. If a regulatory asset is established, it makes sense that it be foregone fees alone that are included for several reasons. First, it is these fees (and not incremental bad debt) that the state government has ordered utilities to stop collecting, despite having a tariff on file that allows them to do so.[18] Meanwhile, while Maryland by executive order has suspended disconnections, it has not absolved customers of their obligation to pay for utility service. This bad debt should still be the financial responsibility of utilities, just as it is the responsibility of competitive retailers. And, by the same token, if the utility's incremental bad debt is socialized, then the same treatment should apply to competitive retailers. However, it makes more sense to create a regulatory asset for late payment fees—which are universally suspended and where resulting revenues have dropped to zero off their test-year levels—than it does for incremental bad debt, which at the present time is a known future expense of unknown proportions. The deferred revenue associated with foregone late payment fees should be subject to an imputation to the POR proceedings, as it normally is, in order to ensure equity between market participants.

[17] Annual POR Reports (2020).
[18] Comments of BG&E, p. 23, noting the prohibition on the charging of late fees by the Governor of Maryland.

In summary, while NRG's primary recommendation is simply to terminate the utilities' regulatory assets altogether for the reasons expressed in Section II of these comments, a limited regulatory asset that incorporates only foregone late payment and service fees would ensure that both competitive retailers *and* the utility face risk exposure of an economy that has left consumers unable to pay, bounded by an adjustment for the revenue that would ordinarily be earned were these fees charged.

C. Incremental operations and maintenance expense appears immaterial

None of the utilities in this proceeding have demonstrated material incremental operating costs related to COVID-19, and as described above none have included or even given consideration to offsetting operational cost reductions that have occurred. The Indiana Commission is again instructive, noting the utilities' claims for deferred accounting of these costs "lack sufficient evidence demonstrating these expenses have created or will create any substantial financial burden on the utility or that the expenses are in any way so significant as to warrant extraordinary relief."[19] The Commission should terminate the regulatory asset as it pertains to operations and maintenance expenditures the utilities have recorded.

IV. The Commission Should Consider Suspending the Bill Stabilization Adjustments ("BSA") that Several Utilities Employ

Three of the four investor-owned electric utilities employ a BSA, which is more conventionally known in the industry as "decoupling." Decoupling allows utilities to charge consumers for electricity they never delivered by surcharging (or rebating) customers when sales volumes in a previous period are lower than (or higher than) expected. The degree to which these utilities are insulated from the economic realities Americans are now facing is profound. The Pepco companies note about 97 percent of their revenues are decoupled.[20] For BG&E, the figure is "roughly 80 percent."[21]

[19] Indiana Order, p. 8.
[20] Comments of Pepco Holdings, p. 17.
[21] Comments of BG&E, p. 20.

Decoupling's advocates observe that utilities will be more likely to embrace energy efficiency programs if their revenues are decoupled from their sales volumes. Perhaps that is the case. But today, decoupling's practical effect is to shift the risk of a major economic downtown from a utility's shareholders to a utility's captive set of customers. Electricity use in PJM has been down at times 10% from peak usage.[22] This lower consumption materializes in the form of higher rates, especially for those small commercial customers where demand has fallen off in notable ways—and where, just as importantly for the Commission's work of balancing social equities, their own sales have slumped. It is not fair for those customers to experience a rate hike even as they use less energy and sell less of the products they make.

V. Conclusion

Most companies doing business in the United States today, NRG included, are exposed to the impacts of the economic trends COVID-19 has produced. Regulated utilities are poised to be an exception—but they do not have to be. Ultimately, a well-structured market will make businesses participate equitably in the risks of an economic downturn, as is the case in fully restructured retail electricity and gas markets.[23] Maryland has work to do in this regard. In the meantime, NRG hopes the Commission will vindicate the public interest by ordering terminated the "regulatory assets" utilities have started to record, or limit them to only foregone late-payment and service fees they would have collected were it not for the Governor's order suspending them. The Commission should also limit the ability of these firms to profit off of energy that, because of lower consumer demand, they never delivered to customers.

Thank you for the opportunity to submit these comments, and NRG looks forward to continuing to participate in this administrative docket.

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[22] PJM, "Updated on COVID-19 Load Impacts" (June 2020). https://www.pjm.com/-/media/committees-groups/committees/pc/2020/20200602/20200602-item-07-covid-19-impacts-and-load-forecast.ashx

[23] Travis Kavulla, "Will regulators allow utilities to reap a windfall because of COVID-19?" *Utility Dive* (June 23, 2020). https://www.utilitydive.com/news/will-regulators-allow-utilities-to-reap-a-windfall-because-of-covid-19/580279/