

ORDER NO. 75935

IN THE MATTER OF THE COMMISSION'S *
INQUIRY INTO THE PROVISION AND *
REGULATION OF ELECTRIC SERVICE. *

BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

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(UNIVERSAL SERVICE) *

CASE NO. 8738

I. INTRODUCTION

In Order No. 73834, issued on December 3, 1997 in the above-captioned proceeding,¹ the Commission decided that competition in the supply of electricity would be beneficial to retail customers and established a framework toward that end. Recognizing the complexity of moving from a system of monopoly suppliers with designated service territories to a system providing a choice of suppliers within service territories, several venues were established to implement that framework and accomplish the changes.

Some electric restructuring topics were potentially amenable to resolution in a formal negotiation process involving groups and individuals with an interest in the industry. Accordingly, a Statewide Roundtable was formed and charged with, among other matters, investigating and proposing

¹ See *In the Matter of the Commission's Inquiry Into the Provision and Regulation of Electric Service*, 88 Md. PSC 249 (1997). Additionally, the Commission issued Order No. 74561,

recommendations on universal service issues. *Id.* at 262. As directed, the Universal Service Working Group ("USWG"), consisting of representatives from the utilities, community action agencies, the Office of People's Counsel, the Commission's Staff, and industrial and commercial customer groups, met regularly to address universal service issues.²

The Commission directed that "the [Universal Service Program ("USP") proposal] developed for our consideration should, at a minimum, provide for the continuation of existing customer protections and assume the availability of the Low Income Housing Energy Assistance Program ("LIHEAP") and the Maryland Energy Assistance Program ("MEAP") funds into the future." *Id.* The Commission instructed further, "that such programs should also include the Utility Service Protection Plan ("USPP") program, restrictions upon winter termination, dispute resolution procedures for both generation

89 Md. PSC 172 (1998), affirming most of the decisions contained in Order No. 73834, but modifying several others.

² The Universal Service Working Group included representatives of the following entities: Public Service Commission Staff; Office of People's Counsel; Forum for Rural Maryland; Choptank Electric Cooperative; Maryland Association of Community Action Agencies; Washington Gas Light Company; Baltimore Gas and Electric Company; Maryland Department of Natural Resources/Maryland Energy Administration; Potomac Electric Power Company; Southern Maryland Electric Cooperative; Eastalco Aluminum Company; Montgomery County; the United Methodist Church Association; the Maryland Industrial Group; the Maryland Energy Assistance Program; The Potomac Edison Company, d/b/a Allegheny Power; Bethlehem Steel; the American Association of Retired Persons; the Maryland Department of Housing and Community Development; the Fuel Fund of Central Maryland; Delmarva Power & Light Company, d/b/a Conectiv Power Delivery; City of Baltimore; Enron; International Brotherhood of Electrical Workers; Air Conditioning Contractors of America; Apartment and Office Building Association of Metropolitan Washington; Building Owners and Managers Association; Catholic Charities; Constellation Energy Source, Inc.; Consumer Protection Division, Office of the Attorney General; Maryland Municipal League; Maryland Retailers Association; Westvaco; and the Towns of Thurmont and Berlin.

suppliers and the Distco [Distribution Company], supply and Distco service quality requirements and low income weatherization programs." *Id.*

In April 1999, the Maryland General Assembly enacted the Electric Customer Choice and Competition Act of 1999 (the "Act"). The Act established how the electric industry in Maryland would be restructured and created a Universal Service Program and Universal Service Fund ("USF") for low-income electric customers. Further, the Act established three areas of assistance for low-income customers: bill payment assistance; low-income weatherization; and arrearage retirement. Act, § 7-512.1(a)(5).

The Act requires \$34 million to be collected annually from Maryland's electric customers to fund the USP. The Act further requires the commercial and industrial classes provide \$24.4 million, with the remaining \$9.6 million to be funded by residential customers. However, the Act expressly prohibits such funds from being collected on a "per kilowatt-hour basis."

Act, § 7-512.1(b)(6). Otherwise, the Act requires the Commission to determine "a fair and equitable allocation for collecting the charges among all customer classes" Act, § 7-512.1(b)(2).

II. PROCEDURAL HISTORY

The USWG met bi-weekly from May 1998 to February 1999 and weekly thereafter, overlapping the enactment of the Act. The USWG filed its final report with the Commission on May 3, 1999. A supplemental report, relating to further efforts with regard to attempts to reach consensus on the USP charges to be paid by commercial and industrial customers, was filed on June 14, 1999.

The parties filed comments on the USWG report on June 23, 1999. On June 30, 1999, the Working Group's utility members filed comments regarding the allocation of USP charges among commercial and industrial customers. Reply comments were filed on July 7, 1999. The Commission's hearing on the USWG report and the parties' comments was held on July 15, 1999.

On August 3, 1999, the Commission issued Order No. 75401 wherein it was noted that the Department of Human Resources, Maryland Energy Assistance Program ("DHR/MEAP") had submitted, on June 23, 1999, a draft USP conceptual design. DHR/MEAP offered to continue towards development of a comprehensive USP proposal and stated its willingness to include all stakeholders in its future design discussions. The Commission invited DHR/MEAP to continue its efforts and encouraged cooperation among all party-participants, where feasible, in the development of a comprehensive

USP proposal for our consideration. The Commission noted, however, that any party-participants or group could submit its own proposal. The Commission directed that any DHR/MEAP or non-utility proposal submitted to the Commission must demonstrate reasonable efforts by the proponents to work with the utilities' billing systems. Likewise, the Commission directed that any utility proposal must demonstrate reasonable efforts to modify existing systems to accommodate reasonable USP proposal objectives.

The Commission next recognized that the USWG developed a list of consensus principles through its work over the past year, and the Commission found that those principles are appropriate. Therefore any proposal to the Commission should:

1. comply with the requirements of the Act;
2. encourage customers to conserve energy;
3. include safeguards to ensure and promote efficient use of funds and accountability for expenditures;
4. provide that local administration of the program should be achieved through the use of a competitive bid RFP process;
5. permit low-income customers, to the extent practicable, to "one-stop shop" for information and applications for services for which they are eligible;
6. provide integrated mechanisms for bill assistance, weatherization and arrearage retirement;

7. describe and delineate DHR/MEAP administrative duties and PSC oversight duties;
8. provide that bill assistance benefits be graduated based on a participant's income level;
9. provide that USP participants pay a portion of their own funds in order to remain eligible for bill assistance; and
10. cap bill assistance at an appropriate level to ensure fund availability.

The Commission further noted that consensus had not been reached among the USWG participants on several other issues, and the Commission encouraged them to continue to meet to resolve as many outstanding issues as possible before USP proposal(s) are submitted for consideration. In particular, on the subject of the allocation of USP charges among commercial and industrial customers, the Commission stated:

[W]e urge the parties to continue to work towards developing a funding methodology that results in sets of uniform Statewide fees for commercial and industrial customers that apply irrespective of the service territory in which the customers are located. The use of Statewide fees should not preclude the differentiation of charges by customer size or electric usage, as long as the methodology proposed includes an appropriate cap. A review of the proposals suggests that \$2,500 per month might be a reasonable cap for the largest commercial and industrial customers.

Any proposal relating to the collection of USP charges from commercial and industrial customers should also discuss how to determine into which step

a customer falls. The Commission's primary interests in a proposal of this type is (i) to have flat fees that do not vary each month, thereby avoiding customer confusion, and (ii) to ensure that similarly-situated customers that happen to be located in different service territories pay the same charge, thereby avoiding any questions of competitive advantage.³

On September 15, 1999, DHR/MEAP and the Utilities⁴ submitted USP proposals. The Maryland Industrial Group ("MIG") and the City of Baltimore submitted proposals relating to the collection of USP charges from commercial and industrial customers. On September 27, 1999, party-participants filed initial comments. Reply comments were filed on October 4, 1999. The Commission's hearing on the USP proposals and the parties' comments was held on October 12, 1999.

III. DISCUSSION AND FINDINGS

A. The Universal Service Program ("USP")

Section 7-512.1(a) of the Act requires the Commission to establish and oversee a universal service program and designates DHR/MEAP as the administrator. The USP is intended to assist electric customers with incomes

³ Order No. 75401, at page 5, August 3, 1999.

⁴ A Joint Proposal was submitted by Allegheny Power, Baltimore Gas and Electric Company, Conectiv Power Delivery, Potomac Electric Power Company, Southern Maryland Electric Cooperative and Choptank Electric Cooperative, referred to collectively as the Utilities. Baltimore Gas and Electric Company also submitted a supplemental proposal.

at or below 150 percent of the federal poverty level through: (1) bill payment assistance at a minimum of 50 percent of the determined need; (2) low-income

The Utilities' Joint Proposal also addressed the issue relating to the collection of USP charges from commercial and industrial customers.

weatherization; and (3) retirement of arrearages incurred prior to the date of initial implementation.

In addition to these three specific program components, DHR/MEAP proposes a more comprehensive program designed essentially to address the bill payment needs of the low-income population.⁵ For example, the DHR/MEAP proposal (III.A.1, page 5) sets goals for educating low-income customers, effecting energy conservation, and teaching self-help strategies to encourage customers to promptly and regularly pay their electric bills.

While the USWG reached agreement in many areas, it did not achieve consensus concerning several principal aspects of the DHR/MEAP proposal. The participants' differences will be discussed by individual topic below.

1. Program Goals

Staff expresses concern with the comprehensive approach of the DHR/MEAP proposal, contrasting it to the legislative framework which sets forth the three specific program components of bill payment assistance, low-income weatherization and retirement of arrearages. Staff believes that the designated funding for universal service may only suffice to meet the legislatively-mandated components of the USP and not the supplemental

⁵ See, Universal Service Program Proposal to Public Service Commission, September 15, 1999, Department of Human Resources, Maryland Energy Assistance Program (hereafter referred to as "DHR/MEAP proposal").

services envisioned by the DHR/MEAP proposal. Staff suggests that the Commission should, at a minimum, clarify that ancillary activities of the USP should be both related to the three components of the USP set in the law as well as cost-effective in assisting the USP to carry out the three functions specified in the Act.

Staff points to DHR/MEAP's plan regarding low-income weatherization as an area that expands on legislative intent. Staff notes that weatherization, generally, applies to corrective measures performed on the exterior of a residential structure to increase the heating or cooling efficiency of that structure. By contrast, Staff notes, DHR/MEAP's efficiency/conservation program addresses such activities as the replacement of household appliances and the like, which are intended to reduce the electric consumption. Thus, Staff urges the Commission to determine which weatherization activities are to be funded.

The Utilities assert that subjects such as consumer education and counseling, workshops, energy conservation, and the like, should be included within the administrative costs portion of the USP budget. They do not oppose these ancillary items as long as these additional benefits are not duplicative of existing programs and are directly related to the use of electricity.

Mr. Robert Adams⁶ asserts that the low-income weatherization component designed by DHR/MEAP is not detailed enough and therefore recommends that the Commission reject this component until additional work is done to answer questions about how this program will operate. Staff strongly agrees with this assessment and Mr. Adams' recommendations.

DHR/MEAP believes that conservation workshops and counseling on energy consumption choices and the like are critical to achieving the Act's intent of creating a level playing field for low-income customers in the upcoming transition to a competitive energy marketplace. In addition, says DHR/MEAP, if low-income customers are not educated as to how to conserve energy, energy that they already cannot afford without either bill assistance or arrearage reduction, then no attempt is being made to reduce future need for USP services.

DHR/MEAP also posits that Staff's suggestion that the Commission clarify that ancillary activities of the USP should be directly related to the three components of the USP misses the fact that education on how to reduce and manage energy consumption is, by its very nature, directly related to both bill assistance and weatherization. Finally, DHR/MEAP argues that nowhere does the law define weatherization in the manner Staff suggests. Since the legislative mandate is to reduce energy consumption in a

⁶ Mr. Adams is a concerned citizen who participated in the proceedings.

cost-effective manner, says DHR/MEAP, this will at times require measures that Staff defined as "energy conservation."

OPC supports DHR/MEAP's program goals as set forth in its USP proposal and urges the Commission to reject Staff's narrow interpretation regarding "weatherization" services. The Maryland Energy Administration ("MEA") also supports DHR/MEAP's position on USP program goals.

In response to Mr. Robert Adams and Staff, DHR/MEAP acknowledges that specific details have yet to be provided on the low-income weatherization component design, noting that it was the recommendation of the USWG's members that such specifics not be provided since they are still in the development stage. Moreover, DHR/MEAP emphasizes that all participants agree that close coordination with existing network agencies, including the State Department of Housing and Community Development, must and will occur to achieve the maximum use of resources and funds.

To allay some of the concerns raised by several parties, DHR/MEAP provided some details at the October 12, 1999 public hearing as follows: regarding the \$3.5 million budget for low-income weatherization, 5 percent would be used for incidental repairs such as door/window repairs, closing of exterior penetrations, and furnace/air distribution systems; 10 percent would be used for appliance replacements/lighting retrofits; targeted number of families would be 3,700, broken down to cost per home of \$1,951 for high use and \$488 for low use; energy audits will be performed in all

households except low-use fossil fuel users; contracts will be competitively bid using the State procurement system and will be performance-based with penalties assessed to the contractor for work that does not meet standards; contractors will be selected on qualifications to meet established criteria, which includes auditing, quality control, training and estimating; categories of eligible participants are specified, and eligible measures are listed as air infiltration reduction, heat pump testing and service, air, wall and floor insulation/ventilation, electric water system treatment, lighting retrofit, minor/incidental repairs, cooling, and finally, appliance replacement.

The Commission shares Staff's concern that the DHR/MEAP proposal exceeds the parameters of the Program and that expansion of the Program may lead to inadequate funding to meet even the three legislatively-mandated components of the USP. The Program as proposed by DHR/MEAP establishes a much broader and more comprehensive effort to assist low-income customers in their ability to pay their electric bills than is set forth in the Act. Conservation measures are worthwhile activities that the Commission believes would be beneficial to low-income customers in managing their electric bills. Nevertheless, the Commission believes it is paramount that the USP first accomplish the legislatively-mandated components of bill payment assistance, low-income weatherization, and retirement of arrearages. To that end, we agree with Staff that any ancillary activities of the USP should be directly related to the three components of the Program.

Additionally, ancillary activities should be shown to be cost-effective in assisting the USP to accomplish the three components specified by the Act. In this regard, USP funds should work in conjunction with existing funding sources where appropriate or should be utilized where other funding sources cannot be used in order to maximize all available dollars. Duplication of procedures and services should be avoided. This would entail working together with, and complementing the work of churches, county governments, federal programs, profit and nonprofit human services agencies, existing network agencies, and the like.

Regarding the interpretation of "weatherization" services, the Commission is aware that the USWG is still in the process of developing specifics for this component. The Commission will await the USWG's recommendations before assessing this program component's scope. However, the Commission wishes to note at this time that energy audits are undoubtedly within the scope of any weatherization program. Indeed, the Commission views energy audits as critical to weatherization programs. On the other hand, the Commission does not view appliance replacement as within the scope of a weatherization program. The Commission acknowledges that some measures defined as "energy conservation" are appropriate in the context of a weatherization program. However, the Commission's interpretation of the Act compels us to hold that the law did not envision appliance replacement as part of a weatherization program. Such a major

departure from the usual definition of weatherization would require, we believe, a specific mandate in the law. Therefore, we will reject any funding proposals for appliance replacement under the Act.

The Commission is also aware that DHR/MEAP has established an advisory board to provide guidance to DHR/MEAP on their implementation of weatherization programs. The Commission directs this board to report to us on October 1 of each year (beginning this year) regarding the status of all aspects of the weatherization program, its funding requirements, and any future recommendations it deems necessary or appropriate.

Finally, the Commission supports the Universal Service Sub-Group recommendation that landlords contribute 25 percent of the total weatherization investment, and that this percent may be adjusted on a case-by-case basis, depending on landlord hardships. However, the Commission is concerned about the unintended consequences that low-income tenants may suffer after weatherization improvements have been completed. Specifically, the Commission fears that such improvements may foster unjust rent increases or lease terminations, thereby forcing low-income tenants to vacate weatherized dwellings. Thus, the very population that the program is aimed at assisting would gain only a short-lived benefit. The Commission therefore also directs DHR/MEAP to consider this issue and to recommend appropriate

guidelines, regulations, or statutory changes that will protect low-income tenants from such consequences.⁷

2. Fund Allocation for Program Components

The Act designates that \$34 million is to be collected yearly to fund the entire USP. The DHR/MEAP proposal designates the amount for each component as follows:

(1)	Bill Assistance	\$23.525 million
(2)	Low-Income Weatherization	3.5 million
(3)	Arrearage Retirement	4.1 million
(4)	Administrative Costs	2.875 million

Further, DHR/MEAP stresses that flexibility in adjusting amounts in each of the three components must be maintained while administrative costs are always capped at 10 percent.

OPC urges the Commission to accept DHR/MEAP's proposed budget as the most balanced in meeting the overall needs requirements of low-income customers.

In slight contrast, the Utilities propose shifting \$1 million away from bill assistance to increase arrearage retirement to \$5.1 million for the first year. The recommended level for the low-income weatherization component is the same as DHR/MEAP's \$3.5 million. The Utilities believe that

⁷ One resolution may be to restrict landlords from increasing rent or terminating leases with low-income tenants for a certain time period after receiving weatherization improvements to their buildings.

this higher level budgeted for arrearages in the first year is appropriate because it expects the first year's focus of the USP will be on sign-up and implementation of the bill assistance and arrearage components.

Staff supports the Utilities' proposal to fund the first year arrearage retirement at a level of \$5.1 million "given the priority of retiring customers' prior arrears so that they can receive electric service."

DHR/MEAP, MEA, OPC, Staff, and several other parties, each have urged the Commission to allow DHR/MEAP flexibility in the budget for at least the first year of the USP. While the Utilities note that they understand the concerns underlying this recommendation, they nevertheless are concerned that a lack of Commission oversight on budgetary matters, particularly allowing funds to be freely shifted from one USP component to another, could cause the USP to be administered poorly and fail to reach its goals. Further, the Utilities believe that the Commission must carefully exercise its oversight responsibilities, especially in the first year or two of the program, to ensure that the fund is reaching the low-income customers it is intended to assist. Finally, the Utilities, agreeing with Staff, believe funding priority should be given to arrearage retirement, at least in the first year.

The Commission supports the Utilities' proposal to shift \$1 million from bill assistance under the DHR/MEAP proposal to increase arrearage retirement to \$5.1 million for the first year. The Commission is of the view that one of the major focal points in the first year of the USP will be the

retirement of customers' prior arrearages in order to receive electric service and participate in customer choice. In addition, the Commission believes that one of the most critical elements for the success of the USP in the future is the arrearage retirement for those low-income customers who either have struggled in the past to maintain their electric service, or lost such service altogether. Therefore, this component should be given adequate priority at the level of \$5.1 million. With this change, the Commission agrees with DHR/MEAP's proposed budget for this year.

The Commission recognizes, however, as do the parties in this proceeding, that it is impossible to attempt to predict with certainty the funding requirements of the various program components. Accordingly, the Commission finds that it is not only appropriate, but necessary, that DHR/MEAP be afforded flexibility to shift funds between the three components of the yearly budget. Before adjustments of \$100,000 or more occur between the various funded components, we direct that DHR/MEAP present the Commission with the specific proposal and its justification. The Commission's expertise in utility and related fiscal matters, as well as the opportunity for all parties to review and comment, will ensure that the low-income customers will be served in accordance with the Act.

3. Bill Assistance Component/Crediting Customers' Monthly Bills

The DHR/MEAP proposal recommends, in pertinent part:

- c. Electric Service Program payments will be made in one lump sum, to the Local Distribution Company. DHR/MEAP's position is that eligible participants should apply the credits on a monthly basis to encourage fiscally responsible practices. Recognizing that sufficient time may not be available for the system changes needed to incorporate such a change, DHR/MEAP's recommendation is that planning begins now so that the utilities are able to integrate this change in the overall system modifications that are needed to prepare for the July 1, [2000] implementation date. All [ESP] and MEAP credits must be clearly identified on customer bills.⁸

Both OPC and MEA support DHR/MEAP's bill assistance proposal.

The Utilities propose a bill assistance program that strongly encourages the use of the existing Utility Service Protection Plan ("USPP"). Their proposal requires that USP participants be sent notices by DHR/MEAP reflecting the amount of the USP grant to be applied to the participant's electricity bill. After the grant is received by the utility, it will then be reflected on the participant's bill. The utility will then estimate the participant's yearly usage, subtract the grant and bill the remainder over a 12-month period. Also, once a year, the utility will give notice to the participant that their monthly bill reflects the USP grant. The Utilities urge this approach because it is consistent with the current Commission rules and is capable of

being administered by the Utilities and MEAP without significant system changes as well as reducing customer confusion.

While neither supporting nor opposing DHR/MEAP's bill assistance proposal, Staff nevertheless recommends that the Commission require the utilities to describe why their billing systems cannot be changed to reflect the USP credit on a participant's monthly bill or, alternatively, include a statement that describes the USP credit each month.

The Commission is not fully persuaded by the arguments of either DHR/MEAP or the Utilities regarding this issue. DHR/MEAP argues in its comments that reflection of these credits on monthly bills "... would encourage more fiscally responsible practices by low income customers and encourage them to ... become more self sufficient."⁹ However, DHR/MEAP offered no evidence to support such a conclusion. On the other hand, the Utilities, in addition to citing a lack of evidentiary justification for monthly crediting of bills, argue that such a change to their billing systems will cause "significant and completely unnecessary expense."¹⁰ Similarly, the Utilities offered no supportive evidence for this conclusion.

The current USPP billing has worked well and does not demonstrate a need for a significant overhaul. Although the Utilities did not quantify "significant expense" due to monthly crediting of bills, the

⁸ DHR/MEAP proposal at pg. 8.

⁹ DHR/MEAP Comments at 2, September 27, 1999.

¹⁰ Joint Reply Comments of Utilities at 5, October 4, 1999.

Commission is concerned that Maryland's utility companies not be disadvantaged with unnecessary and burdensome expenses as they transition to the new competitive electric market. Therefore, we adopt the Utilities' proposal. However, the Commission supports the goal of encouraging fiscally responsible practices by customers. Thus, the Commission directs the Utilities to include a statement in customers' bills that describes the USP credit on a quarterly basis, as opposed to annually or monthly.

4. Arrearage Retirement Component

The arrearage retirement component of the USP plan has clearly generated the most disagreement and controversy. Because no solid data currently exists as to the total liability of this fund component, some parties are concerned that the outstanding arrearages of the benefited class will absorb a large portion of the Fund preventing adequate funding of the other components. Conversely, other parties, chiefly the Utilities and Staff, contend that absent sufficient money for retiring arrearages, customer participation in the program may be impeded.

Essentially, the elements of the DHR/MEAP arrearage retirement proposal that have generated the most disagreement are as follows: (1) that both electricity customers and off-service applicants be eligible to apply for the arrearage component of the USP; (2) that the Commission is requested to amend COMAR 20.31.02.01B(8) to limit the period from seven to three years

for allowable recovery of arrears costs; and, (3) that the Commission consider capping the amount an eligible participant receives for arrearage retirement.

The Utilities' proposal supports the full retirement of arrearages for active residential customers, subject to the \$34 million cap and apportionment of the Fund to other components. While the Utilities assert that the Act does not require that arrearage retirement apply to any person that is not currently taking service from a utility due to past due bills, they propose that these off-service customers be eligible for a credit up to \$1,200 from the USP. However, the applicant would remain off-service until or unless the applicant made arrangements for payment of the remainder of the outstanding bill. Further, the Utilities propose a cap of \$1.6 million in the first year for the off-service customers. In addition, the Utilities recommend that, for the first year of the program, each utility be reimbursed from the Fund for arrearage claims up to \$500,000. If a utility's arrearages are less than that amount, it will receive only monies for what it has claimed. After this, any unused portion of the arrearages fund should be distributed in an equitable manner such as a pro rata share of total arrearages. The Utilities note that for all the utilities, except BGE, this may result in a full recovery of the known arrearages in the first year.

BGE filed a supplemental proposal to the Utilities' proposal. BGE, like the other utilities, also proposes the payment of the total outstanding arrearages of active or on-service customers from the USP fund. BGE also

shares the Utilities' view that the Act does not address the off-service customer. Nevertheless, BGE agrees that the "spirit" of the Act ultimately envisions providing assistance service and access to the benefits of competition to the off-service customer. Accordingly, BGE proposes that the USP pay up to \$2,000, rather than the Utilities' \$1,200, towards an off-service customer's arrears. Further, BGE proposes that the electric utility will require no further payment towards those amounts above \$2,000. Finally, under BGE's proposal, any customer who is terminated for non-payment of arrearages that were incurred after the implementation of customer choice is not eligible for the arrearage retirement provisions of the USP for those arrearages.

DHR/MEAP supports BGE's proposal for a \$2,000 cap. Energy Advocates believe BGE's proposal is preferable to the Utilities. In reply to BGE's proposal, the Utilities argue that the \$2,000 amount is "excessive" and that the Commission does not have the authority to forgive debt.

Staff argues unequivocally that the Act does not allow the USP to differentiate between on-service and off-service customers with respect to arrearage retirement. Staff believes that all arrearages for the eligible population incurred prior to July 1, 2000 are to be retired. Recognizing that the size of this obligation cannot be known at this time, Staff posits that mechanisms for funding this large obligation should either fund it over three years or reduce its magnitude in some way. Staff posits that DHR/MEAP's

proposal to revise COMAR 20.31.02.01B(8) and BGE's proposal to write off arrearages for off-service customers over \$2,000 are attempts to reduce the magnitude of the problem. Accordingly, Staff supports BGE's proposal for retiring arrearages as the best approach on the table consistent with the Act.

Finally, Staff, in agreeing with the Utilities and BGE, believes it is inappropriate to make the revision to the COMAR "seven year rule" to limit the denial or termination of service for non-payment to bills no more than three years old. Staff and these parties note that it is inappropriate to make such a change in this proceeding because the change would be applicable to all residential customers, not just low-income customers.

OPC notes that the practical problem for all the parties is trying to establish arrearage program parameters that will provide the customers the opportunity to go forward with a "clean slate," without jeopardizing the assistance levels that are needed for current service. Therefore, OPC urges the Commission to incorporate the following principles for an arrearage retirement program.

To begin, OPC recommends that the Commission establish that active electricity customers and applicants for electricity, including persons who are "off-service," are eligible to apply for and receive arrearage assistance from the USP, and that the rules and requirements should be the same for active and off-service customers. OPC supports an initial funding level of no more than \$4.1 million for each of the first three years and requests the

Commission to consider a cap on the outstanding arrears to be paid per customer (e.g., a cap on dollars or a cap on the age of the outstanding arrears). OPC further recommends that if such a cap was imposed, that a customer payment contribution, set within affordability limits, be developed as part of the program.

Next, OPC supports the DHR/MEAP's proposal to revise the "seven year rule" in the COMAR regulations to limit the denial or termination of service for non-payment to bills no more than three years old. OPC also recommends that the Commission establish that the arrears balance for each USP customer be paid from the USP fund over a period of three years, or one or two years if the customer does not apply for USP until year two or three. Finally, in the event that the amount budgeted for bill assistance or energy efficiency will not be "spent" by year end, OPC recommends that DHR be permitted the flexibility to reallocate those unspent funds for payment of arrears.

The Commission agrees with DHR/MEAP, Staff, OPC and other parties that the intent of the Act does not permit the USP to differentiate between "on-" and "off-" service customers with respect to arrearage retirement. Therefore, the Commission finds that "active" electricity customers, as well as applicants for electricity service, including persons who are "off-service," are eligible to apply for and receive arrearage assistance from the USP. As noted hereinabove, the level of funding for the arrearage

retirement component shall be \$5.1 million in the first year, subject, of course, to reasonable and justifiable flexibility. Several parties, as a result of the difficulty to determine the ultimate level of arrearages, support establishment of an arrears account for each USP customer that would be paid out of the USP arrearage fund over a period of years. The Commission does not support such a plan. The Commission believes that it would be too confusing to administer, as it applies to customers and their bills. Further, it is the Commission's view that it is in the interest of all parties involved that the benefited class of customers be given a "clean slate" as early as possible in the new competitive electricity market. In this regard, the Commission envisions that any unspent budgeted amounts for bill assistance or weatherization by year-end be reallocated for payment of arrearages as necessary under the flexibility DHR/MEAP is afforded hereinabove.

With regard to the issue of a cap on the amount of arrearage assistance from the USP Fund to off-service customers, the Commission adopts the BGE Proposal, which establishes \$2,000 as the cap for arrearage recover. In this case, BGE is willing to forego any recovery over and above that amount. While the Commission does not direct any utility at this time to adopt a similar level as full and complete payment, the fact that the utility with the greatest amount of arrears is willing to adopt this approach suggests that other utilities should be able to accomplish a similar outcome on a voluntary basis. The Commission encourages them to do so.

Further, despite the objections of some parties, the Commission also believes that in certain circumstances, a customer payment contribution toward arrear retirement is both warranted and appropriate. Financial participation by customers in the retirement of their arrearages will encourage fiscal responsibility while also maximizing the use of funds available under the program. Accordingly, the Commission directs DHR/MEAP to develop a customer payment plan that requires on-service and off-service customers above 100% of the federal poverty level to contribute toward their arrearage retirement. The amount of contribution should be set within affordability limits and be based on a sliding scale, so that the amount of required contribution correspondingly increases with the level of an individual's income. However, no payment contribution will be necessary for customers, both on-service and off-service, at or below 100% of the federal poverty level in order to participate in the Program.

The Utilities put forth a proposal that indicated a willingness to retire arrearages incurred by customers after the implementation date. We note, however, that § 7-512.1(a)(5)(iii) limits the use of universal service funds and mandates the use of arrearage retirement funds for the retirement of arrearages incurred prior to the implementation date. Therefore, it would be inappropriate for the Commission to adopt a position to the contrary. Additionally, we note that one component of the universal service program is bill payment assistance. It is the Commission's expectation that bill payment

assistance should help preclude the accumulation of arrears after July 1, 2000. Given this expectation, the Commission is interested in tracking the extent to which the Fund may or may not meet the bill assistance needs of the program participants so as to prevent the accumulation of new arrearages. Data in this regard should be made available.

With regard to the allocation of arrearage assistance funds, the Act requires that the USP be Statewide. Fairness dictates that this standard be maintained as well. A customer's location should neither assure coverage nor prove a detriment to coverage. This program shall apply Statewide with no geographic allocation and be available on a first-come, first-served basis.

Finally, the Commission will not grant the request to revise COMAR 20.31.02.01B(8) to limit the period from seven to three years for allowable recovery of arrears costs in this proceeding. Since the "seven year rule" is not limited to low-income customers alone, but rather affects all utility customers, the Commission believes prudence requires this issue be considered separately.

5. Customer Class Allocation of Universal Service Charges

a. Residential Customers

Section 7-512.1(d)(1) of the Act provides that the total amount collected for the universal service fund shall be \$34 million in each of the three years following the initial implementation date. Further, § 7-512.1(d)(2)

directs that \$9.6 million of that amount be collected from residential customers in each of those three years. The USWG agreed upon this residential charge being a uniform, Statewide monthly fee. This residential charge is calculated at approximately \$4.97 - \$5.00 annually, with a monthly fee of approximately 0.41 – 0.42 cents for every residential customer.

b. Commercial and Industrial Customers

Section 7-512.1(d)(1) of the Act provides that commercial and industrial customers shall contribute \$24.4 million to the universal service fund in each of the three years following the initial implementation date. The USWG did not achieve consensus on an allocation and collection methodology for the commercial and industrial customers' share of the universal service fund. Representatives of commercial and industrial customers discussed how to best allocate their \$24.4 million share of the universal service fund among themselves and were unable to come up with a workable methodology agreed to by all the members of the USWG.

In Order No. 73834 in this proceeding, the Commission directed the USWG to develop "specific proposals and cost estimates for universal service (including a universal service charge) in Maryland."¹¹ Following the filing of two Interim Reports, it was agreed by all USWG members that legislation was required to implement USP charges or funds. Subsequently,

¹¹ 88 Md. PSC 249 at 309 (1997).

the Act provided the authority for a USP, a USF, and a mechanism or universal service charge to collect the needed funds. Pursuant to the Act, \$24.4 million of the \$34 million is to be collected by electric companies from their commercial and industrial electric customers. The Commission was charged with determining a fair and equitable allocation for collecting the charges among all customer classes as well as the allocation of the USP charge among the generation, transmission, and distribution rate components of each class' rate. The Act prohibits collection of universal service charges on a per kWh basis. (§ 7-512.1(b))

In Order No. 75401, the Commission urged the parties to continue to develop a funding methodology that would result in uniform Statewide fees by customer set, irrespective of service territory. Also, the use of Statewide fees should not preclude the differentiation of charges by customer size or electric usage, as long as the methodology proposed includes an appropriate cap. The Commission suggested that \$2,500 per month might be a reasonable cap. Finally, the Commission noted that its primary interests were to (1) have flat fees that do not vary each month, thereby avoiding customer confusion; and, (2) ensure that similarly situated customers in different service territories pay the same amount for competitive reasons.

Proposals for allocating USP charges among commercial and industrial customers were filed by MIG, the City of Baltimore, and the Utilities.¹²

¹² In its proposal, dated September 15, 1999, the City of Baltimore proposed a two-tiered cap. In lieu of earlier comments, the Maryland Retailers Association withdrew its suggested allocation methodology and adopted the City's proposal. However, in Reply Comments, dated October 4, 1999, the City of Baltimore withdrew its two-tiered cap proposal in favor of a flat Statewide percentage charge on distribution services with no cap.

However, by letter dated October 7, 1999, the City of Baltimore withdrew its proposal from consideration. The Commission, therefore, will focus its discussion on the two remaining proposals presented in this proceeding.

The Utilities' proposal uses a two-step, percent-based approach to develop the C & I surcharge. The first step divides the \$24.4 million commercial and industrial allocation among the utilities on the basis of factors that have been determined jointly by the utilities to be fair as set forth in Attachment B to the Utilities' proposal. The Utilities posit that this step results in a fair distribution of the fee requirements and attempts to mitigate bias. The second step of the Utilities' proposal divides the allocation by a revenue measure appropriate to each particular utility, thereby determining a single percent fee to charge a particular utility's customers. The single percent fee would then be allocated evenly to the range of customer sizes up to a \$2,500 monthly cap. The Utilities note that the USP charge would range from 4.7 percent to 6 percent of delivery service revenues, depending on the utility. The Utilities further note that the impact on all customers' accounts would be comparable except for those that would otherwise exceed the cap. Finally, the Utilities posit that their percent fee basis is predictable, easy for customers to understand, and reasonable to implement in the short timeframe remaining until July 2000.

Staff favors the Utilities' proposal for determining and assessing the C & I customer surcharge. However, Staff notes that on page four of

Attachment "A" to the Utilities' proposal, the Utilities recommend that unexpended USP funds be applied to the following program year's funding.

Staff argues that

the Act clearly specifies that the universal service funds are to be refunded to customers and therefore this element of the Utilities' proposal should be rejected.

MIG's proposal allocates the \$24.4 million C & I revenue responsibility for USP using a 23-step fee structure, as shown in their attachment, developed on the basis of designated revenue tiers. The first year fees would be based on bundled electric bills rendered through 1999. In subsequent years, the fee steps would be based on the customer's annual distribution bills. MIG believes its proposal will be easily understood by customers and that it treats all customers in the State who fall within the same billing population tier equally. MIG also notes that their methodology gives reasonable assurance that the required \$24.4 million will be collected as required by the Act.

Both the Utilities and Staff argue that the MIG proposal demonstrates the inequities that arise from a flat fee applied on a Statewide basis. They assert that the Statewide fee will have differing impacts on the customers, depending on their location and utility rates. Further, the tier structure needed to produce fixed fees creates inequities within each fee bracket; that is, the fee for smaller customers in the bracket is a larger percent of their bill as compared to the customers at the upper end of that tier. The Utilities and Staff note that 82 percent, or over 178,000 of the total 216,326 C & I accounts, fall within the range of annual bills of less than

\$5,000 per year who will pay proportionally 10 times more than the largest C & I customers. Thus, the smaller customers see a greater impact with respect to percent of energy billed than do the large customers. Finally, while the Utilities concede that MIG's 23-tier proposal is "doable" from a utility billing standpoint, both they and Staff point out that MIG's proposal will require the utilities to make extensive programming and system modifications that still would produce an inequitable result.

In reply, MIG objects to the Utilities taking the annual customer charges in its proposal and calculating a "percent impact" on a customer's bill. MIG argues that such a calculation for a "customer charge" is inappropriate since it is intended to recover a cost that has no relationship to a customer's consumption. Citing the example of the customer charge for recovering the cost of billing, metering, etc., MIG asserts that the USP charge is the same as a customer charge in which all the members of a customer class pay the identical charge irrespective of each customer's energy consumption or the total bill of each customer.

MIG further posits that USP charges cannot be allocated using accepted cost of service principles and that the Act bars the allocation of USP charges based on energy consumption. MIG notes that it would be consistent with established precedent for recovering costs that are not consumption-related or otherwise allocable under cost causation principles, to allocate USP charges among C & I customers by dividing the total number of C & I

customers by the \$24.4 million to be collected annually. This results in an annual USP C & I customer charge of \$110.63 per customer. In contrast, MIG proposes a methodology which imposes significantly higher USP charges on larger C & I customers in order to reduce, by almost half, the amount of customer charges that would be paid by approximately 81 percent of C & I customers. Under MIG's proposal, 81 percent of C & I customers will pay \$5.00 per month, or \$60.00 annually.

Finally, MIG believes in contrast with the ease of explaining its proposal to C & I customers, it will be difficult to explain under the Utilities' proposal why C & I customers were paying different monthly USP charges and why the USP charge billed to one customer was different than the USP charge billed to a similar customer of another Maryland utility.

After careful consideration of the two proposals, the Commission adopts, with modifications, MIG's 23-step fee structure for allocating the \$24.4 million C & I revenue responsibility for the USP. While there may be some inequities in the MIG proposal, as amended the results are more equitable than the allocation methodology proposed by the Utilities.

More than the Utilities' proposal, MIG's 23-step fee structure closely mirrors the Commission's previously stated preferences in Order No. 75401 for developing a funding methodology and more closely adheres to the structure required by the Act. As suggested in that Order by the Commission, MIG's proposal includes uniform Statewide fees by customer set, irrespective

of service territory, differentiating charges by customer size, while utilizing an appropriate cap. To avoid customer confusion, MIG's proposal imposes flat fees that do not vary each month. Additionally, MIG's 23-step fee structure ensures that similarly situated customers in different service territories throughout the State pay the same flat fee in order to avoid a competitive advantage. Finally, in accordance with § 7-512.1(b) of the Act, the charges are not based on a per kWh basis, but rather upon bundled electric bills rendered through 1999 for the first year, and upon the customer's annual distribution bills in subsequent years. The Commission agrees with MIG's assertion that the C & I surcharge is similar to a utility "customer charge," which is traditionally designed and intended to recover a cost that bears no relationship to a customer's consumption.

The Commission's modifications to MIG's 23-step fee structure proposal are set forth on Attachment A appended to this Order. Essentially, the Commission's 23-step fee structure modifies MIG's customer charge, which ranges from \$5 per month, \$60 per year cap, to \$2,500 per month, \$30,000 per year cap, to a range of \$3 per month, \$36 per year cap, to \$3,500 per month, \$42,000 per year cap. The major impact of the Commission's modifications to MIG's proposal is to lessen the burden (by approximately \$4.2 million) of the C&I surcharge on the smallest commercial and industrial customers in the State who comprise approximately 82 percent of the C & I accounts. Consequently, this results in spreading a more appropriate amount of the burden among the larger C & I customers. Accordingly, the Commission finds the 23-step fee structure set forth on Attachment A to this Order to be the most fair and equitable allocation for collecting C & I USP charges.

IV. CONCLUSION

The Commission has reviewed and given careful consideration to the Act and its provisions regarding the Commission's role in establishing a universal service program for the benefit of low-income electric customers. In addition, the Commission has reviewed and considered the final and supplemental reports of the USWG and the USP proposal of DHR/MEAP filed on September 15, 1999, as well as the filed comments and reply comments of all

party-participants and their testimony presented in hearings before the Commission on July 15 and October 12, 1999. We find and conclude that the policies set forth in the

Universal Service Program proposal to the Public Service Commission by the Department of Human Resources/Maryland Energy Assistance Program on September 15, 1999, subject to modifications and directives and findings hereinabove, are adopted. Finally, pursuant to § 7-512.1, the Commission directs that DHR/MEAP submit an annual report to the Commission on October 1 of each year, beginning this year, setting forth the status and progress of the entire Universal Service Program in Maryland. The Commission wishes to extend its gratitude to all party-participants for their tremendous efforts in formulating a Universal Service Program for low-income customers in this State. The Commission believes that these efforts will result in the ability of all citizens, regardless of income status, to benefit from the new competitive supply market which will begin in this State on July 1, 2000.

IT IS, THEREFORE, this 28th day of January, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That the policies set forth in the Universal Service Program Proposal filed on September 15, 1999 by the Department of Human Resources/Maryland Energy Assistance Program, subject to the modifications, directives, and findings herein, are adopted.

(2) That DHR/MEAP and other parties, as appropriate, shall implement the directives set forth by the Commission herein.

(3) That the Department of Human Resources' advisory board report to the Commission on October 1 of each year regarding the status of all aspects of the weatherization program, its funding requirements, and any future recommendations it deems necessary or appropriate.

(4) That DHR/MEAP submit an annual report to the Commission on October 1 of each year setting forth the status and progress of the entire Universal Service Program in Maryland.

_____/s/ Glenn F. Ivey

_____/s/ Claude M. Ligon

_____/s/ Susanne Brogan

_____/s/ Catherine I. Riley

_____/s/ J. Joseph Curran, III

Commissioners

ATTACHMENT A

**FIRST YEAR (7/1/2000 - 6/30/2001)
C & I USP CHARGES BASED ON BUNDLED ELECTRIC BILLS
FOR CALENDAR YEAR 1999**

Total Electric Bills Rendered <u>1/1/99 - 12/31/99</u>	Total Customers Statewide <u>(Per Segment)</u>	Customer Charge <u>(Per Month/Year)</u>	Universal Service Customer Charge Revenues <u>(Per Segment)</u>
Under \$5,000	178,058	\$3/36	6,410,088
\$5,000-9,999	18,907	\$10/120	2,268,840
\$10,000-24,999	13,517	\$20/240	3,244,080
\$25,000-49,999	5,607	\$45/540	3,027,780
\$50,000-99,999	2,813	\$75/900	2,531,700
\$100,000-199,999	1,658	\$100/1200	1,989,600
\$200,000-299,999	545	\$150/1800	981,000
\$300,000-399,999	183	\$200/2400	439,200
\$400,000-499,999	130	\$300/3600	468,000
\$500,000-699,999	130	\$400/4800	624,000
\$700,000-899,999	56	\$500/6000	336,000
\$900,000-999,999	27	\$600/7200	194,400
\$1,000,000-1,999,999	87	\$750/9000	783,000
\$2,000,000-2,999,999	13	\$1,000/12,000	156,000
\$3,000,000-3,999,999	15	\$1,500/18,000	270,000
\$4,000,000-4,999,999	6	\$1,800/21,600	129,600
\$5,000,000-5,999,999	9	\$2,000/24,000	216,000
\$6,000,000-6,999,999	1	\$2,200/26,400	26,400
\$7,000,000-7,999,999	3	\$2,500/30,000	90,000
\$8,000,000-8,999,999	2	\$2,800/33,600	67,200
\$9,000,000-9,999,999	1	\$3,000/36,000	36,000
\$10,000,000-12,500,000	1	\$3,200/38,400	38,400
Over 12,500,000	4	\$3,500/42,000	168,000

		Total:	\$24,495,288
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