

**ORDER NO. 76049**

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

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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(UNIVERSAL SERVICE)

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CASE NO. 8738

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**I. INTRODUCTION**

By Order No. 75935, issued on January 28, 2000 in Case No. 8738, the Commission established various standards and procedures relating to the Commission's establishment of a universal service program pursuant to the Electric Customer Choice and Competition Act of 1999 (the "Act"). Included in the Order were specific directives pertaining to components of the Universal Service Program (or "USP") such as program goals, fund allocation, bill assistance, arrearage retirement, and customer class allocation of universal service charges.

Requests for rehearing, and clarification or modification of Order No. 75935 were filed by Potomac Electric Power Company ("Pepco"), the Office of People's Counsel ("OPC"), the Office of Attorney General on behalf of the Department of Human Resources/Maryland Energy Assistance Program ("DHR/MEAP"), and Maryland Retailers Association ("MRA").<sup>1</sup> These are now before the Commission and will be addressed by this Order.

## II. DISCUSSION

### A. Low – Income Weatherization

DHR/MEAP and others urged the Commission to implement the Universal Service Program without delay. The Frederick Community Action Association ("FCAA") also requested that the Commission implement the USP weatherization program on July 1, 2000 by subcontracting the program administration to the Community Development Administration of the Department of Housing and Community Development ("DHCD"). The Commission wishes to clarify that it intends no unnecessary delay in the implementation of the program. The Commission does, however, expect that all components of the USP will be implemented soundly and in accordance with previous Orders, including the directive with regard to assumptions concerning existing weatherization programs. The Commission rejects the request of FCAA to subcontract the administration of low-income weatherization to DHCD.

OPC, DHR/MEAP and Energy Advocates also asserted that the Commission viewed the weatherization component of the program too narrowly and that weatherization should include appliance replacement. Examples of appliance replacement given by OPC include energy efficient refrigerators, window air conditioning units and other appliances.<sup>2</sup> These advocates point to the definition of "universal service program" contained in §7-501(q) of the Act to include measures to reduce energy consumption.<sup>3</sup> It is worthy to note, however, that §7-512.1(a)(5) of the Act specifically requires low-income weatherization. By definition,

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<sup>1</sup> Also requesting rehearing, or commenting on Commission Order No. 75935, were Frederick Community Action Association, Garrett County Community Action Committee, Energy Advocates and Community Assistance Network.

<sup>2</sup> OPC Request for Rehearing at 4.

"weatherization" is "the systematic application of insulation materials to a structure to retard

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<sup>3</sup> *Id.* At 3-5; DHR/MEAP Request for Rehearing at 2-3.

the loss of the heated or cooled air within that structure."<sup>4</sup> The Commission views low-income weatherization to include structural or shell repairs or upgrades. Installation of energy efficient windows and doors would constitute a permissible use of USP funds while technically constituting an energy conservation measure.<sup>5</sup> The nature of these efforts is to reduce energy consumption.

The Commission recognizes that there are other measures that also may reduce energy consumption but do not fall within the parameters of weatherization. Energy conservation, which includes the measures advocated by OPC and others, may come within the scope of "universal service program," as defined, and may be desirable. However, §7-512.1(a)(5) speaks to low-income weatherization and not the broader category of energy conservation.

The Commission notes that the USP has finite resources. The Act requires arrearage retirement and bill payment assistance in addition to low-income weatherization. With the limited amount of money that can be directed toward weatherization at this time, it is appropriate that the measures undertaken meet the narrower parameters defined above. Nevertheless, as funds become available with arrearage retirement completion, it would be appropriate to consider a redistribution of funds to broader low-income energy conservation measures. The Commission will therefore revisit this issue when it is appropriate to do so. Finally, there are other groups involved in weatherization programs and activities. The Commission continues to believe that their efforts must be coordinated with this program.<sup>6</sup>

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<sup>4</sup> Md. Ann. Code, Article 41, §6-402.

<sup>5</sup> See Order 75935, at 11: "The Commission acknowledges that some measures defined as 'energy conservation' are appropriate in the context of a weatherization program."

<sup>6</sup> See *e.g.*, Order No. 75401 (August 3, 1999) at 4.

**B. Transfer of Funds Among Program Components**

Another issue raised by DHR/MEAP centers on the \$100,000 limit the Commission imposed on the transfer of funds among Universal Service Program components. DHR/MEAP argued that the \$100,000 limit is too low, and that such a limit will force the agency to come to the Commission more frequently than should be necessary. For that reason, DHR/MEAP suggested that the amount be raised to \$1,000,000. OPC agreed, stating that DHR/MEAP should have greater budget flexibility.<sup>7</sup>

The concern raised by DHR/MEAP, OPC and others, with regard to this issue, has merit. Therefore, the limit on transfer of funds among program components will be increased to \$750,000. However, the Commission will also require reports regarding program operations on a quarterly basis as opposed to every six months, and at such other times as appropriate (e.g. if expenditures exceed a quarter of the fund or is close to the program cap). The Commission believes that it is prudent to work with all parties to ensure that a meaningful and successful program is available for customers. Given the limited resources created by the Universal Service Program, DHR/MEAP and its subcontractors should endeavor to utilize, to the fullest extent possible, all other sources available in order to meet the needs of customers.

Given the various funding issues and questions regarding the adequacy of allocations to the three components, it is likely that the Commission may want to revisit this issue. It is also incumbent on all parties to review the program and to suggest changes where and when necessary. USP funds will be collected beginning with monthly bills in July 2000. Since these funds will accrue to DHR from the Comptroller's Office on a monthly basis, less than \$3 million per month will be forthcoming.<sup>8</sup> The

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<sup>7</sup> OPC Request for Rehearing at 6.

<sup>8</sup> In accordance with the requests of DHR/MEAP and OPC in letters dated March 21, 2000 and March 30, 2000, respectively, electric companies shall remit USP fees to the Office of the Comptroller on a monthly basis.

Commission is concerned about how expenditures and/or commitments for expenditures will occur across the 23 counties and Baltimore City among the three program components. The monthly allocation process led the Commission to believe that DHR will know what the funding needs are and which programs need assistance from the fund in a more timely way and therefore with lesser dollar amount transfers necessary.

**C. USP Status Report**

DHR/MEAP and OPC argued that the Commission should not require that the status report detailing the progress of the weatherization program be submitted to the Commission from the DHR advisory board but that the report should come directly from DHR. The Commission made this recommendation in order to insure that the specifics of this program would come quickly to its attention. This would provide the Commission with timely information on both operations and financial needs of the program. The Commission did not intend for this to be problematic, but rather helpful and as a means of obtaining the information more efficiently. However, the Commission does not foresee any specific complications posed by the submission of the status report directly from DHR and not its advisory board.<sup>9</sup> Therefore, either approach would be acceptable.

**D. Allocation of USP Charge**

In its request for rehearing, Pepco's comments centered on its dissatisfaction with the Commission's adoption of the modified version of the Maryland Industrial Group ("MIG")

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<sup>9</sup> Additionally, DHR/MEAP indicated that, in lieu of specific direction to the contrary, they intend to refer to the universal service program as the Electric Service Program (ESP). Its proper name, as provided in the Act, is the Universal Service Program ("USP"). However, should DHR believe that it is necessary to choose to differentiate the USP from the existing USPP (Utility Service Protection Program), it should use the name which is being used in

commercial and industrial universal service fund allocation proposal, which incorporated a 23-step rate structure. Pepco believed that the modified MIG proposal violates the fair and equitable standard of cost allocation outlined in §7-512.1(b)(2) of the Act and that the Commission's reason for adopting this proposal was not supported by law or facts. In addition, Pepco stated that such a proposal would be too difficult to explain to its commercial and industrial ("C&I") customers because the 23-step rate structure is too complicated.

In its request for rehearing, MRA, like Pepco, argued that the Commission's allocation of the USP surcharge among C&I customers does not meet the fair and equitable standard set forth in §7-512.1(b)(2) of the Act. In contrast to Pepco, however, MRA stated that such an allocation places a disproportionate share of USP charges on small users and other commercial customers. They further proffered that their flat percentage charge on total bills outlined in their June 22, 1999 proposal should be given further consideration. MRA had requested that the Commission adopt a 1.13 percent surcharge on each bill as an appropriate C&I allocation.

The allocation of funding for the commercial and industrial part of the USP has proven to be the most vexing of all program issues. The Act allocated \$34 million to the Fund. Of this amount, \$9.6 million is to be obtained from residential customers and the remaining \$24.4 million from the commercial and industrial sector. Other requirements in the Act include that the program be Statewide, that the formula be fair and equitable and that it not be assessed on a per kilowatt-hour basis.

During the filings last summer prior to the Commission hearing on this issue, and indeed, at the hearing itself, considerable attention was directed toward devising an appropriate allocation formula

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educational materials, i.e., the Electric Universal Service Program ("EUSP"). The use of the acronym EUSP in all customer materials should minimize any confusion between the two programs.

that met all aspects of the Act. Various interpretations were offered. The Joint Utilities offered a two-tier program, based first on allocation of a portion of the C&I to be collected to each utility service territory based on their number of customers eligible for the program. Then each utility would apply some mechanism to each account to generate their allocated amount. The Maryland Retailers Association was vehement in its opposition to this proposal. Their opposition was based on the belief that this proposal violated the “Statewide” requirement of the law. They further proffered that a similar-type amendment was offered in the Senate Finance Committee during the Act’s consideration and was rejected for the above reason. Additionally, this Joint Utilities proposal raised concerns regarding competing C&I customers in different service territories having different charges. This appeared to violate the fair and equitable standard since similarly- situated customers in different territories would receive different treatment.

A second proposal was offered by MIG which created a Statewide allocation of this portion of the fund and based it on the customer's total year's electricity costs. It established 23 tiers based on annual costs and set a standard fee for each tier. The largest users had their contribution capped. The Maryland Retailers Association supported this proposal in their June 22, 1999 letter to the Commission. However, MRA wanted the fees to be imposed on a customer basis as opposed to an account basis. Thereby, an entity having many business outlets and more than one meter would be considered as having a single bill. This would limit total exposure similar to the limitation for large users. However, MRA learned that the utilities could not track bills in such a way in order to accomplish this approach, particularly since many customers cross individual service territory area boundaries.



Given the above difficulty, MRA suggested that the Commission impose a straight across-the-board percentage charge, similar to the sales tax. Based on 1997 data (as the MIG figures are), MRA determined that a 1.13 percent surcharge calculated on total bills would generate the \$24.4 million. They found this to be fair, equitable and Statewide. Such a proposal seems remarkably like the imposition of an energy tax similar to that which was repealed by the General Assembly many years ago. In addition, it could be interpreted as resembling too closely the per kilowatt-hour prohibition found in the Act as the amount collected varied based on consumption.

After the hearing, the Commission requested that the parties revisit this issue, along with several others, and come back with a Statewide program that was fair and equitable, had a cap on the largest customers and did not charge on a per kilowatt-hour basis. The parties' responses indicated their positions remained essentially entrenched. Only Baltimore City came forth with a different proposal. Subsequently, the City withdrew its proposal. Thus, the Commission was faced with developing an allocation process that would meet its standard as closely as possible. Some have described this effort as a zero-sum game in that to affect one positively someone else has to be affected negatively. Such is the issue back before the Commission on a rehearing request.

The Commission recognizes that no proposal is perfect. Each raises concern regarding its fairness and equity. However, the Commission has attempted to devise a plan which is the least unfair and inequitable, but meets all other guidelines established in the Act. Using this approach, the Commission again rejects the Joint Utilities proposal supported by Pepco in its rehearing request because it does not meet the Statewide requirement of the Act. In addition it is not fair and equitable in that similarly-situated customers in different service territories are treated very differently.

At the request of MRA, the Commission again reviewed its proposal for a 1.13 percent surcharge on total bills. It continues to be attractive for the simplicity of its approach and apparent ease of implementation. However, as noted above, there are problems with this proposal as well. In addition, there is no cap on large customers. The problem with this plan is that the actual fees collected each month would vary based on use since the surcharge would apply to the actual bill, unlike MIG's approach that uses historic data. This presents the problem of having different levels of collection for the USP program each month. The only solution would be to vary the percentage monthly to insure an appropriate level of collection which creates implementation nightmares for the utilities. Indeed, it is unclear whether utilities could even accomplish monthly variations of the plan. Adopting this approach would substantially change our original Order and would likely invoke further requests for rehearing leading to additional delay.

The Commission continues to believe that a set fee, which does not change on a monthly basis and is not sensitive to monthly alterations in use, is the most fair and equitable standard. In addition, we believe it is the easiest for the customer to understand. Similarly-situated customers will pay the same, regardless of their geographic location. That the fee falls on multiple accounts more heavily is unfortunate and could be resolved if the utilities could track multiple accounts. In Order No. 75935, the Commission altered the original MIG approach considerably to lessen the impact on smaller users. Since users with bills less than \$25,000 annually comprise 94.4 percent of all commercial and industrial accounts, our changes dropped their overall contribution to the \$24.4 million from \$16 million to \$11.9 million. Indeed, MRA's original similar proposal had \$14.5 million coming from this small user group.

However, the Commission is sensitive to the issues raised by small to medium users. Therefore, the Commission has revisited the allocation process and have again lessened the impact on the users with annual electric bills between \$25,000 and \$200,000. It goes without saying that in order to accomplish this, the zero-sum game requires that the standard fee for some of the larger user groups will increase to some extent. The range of contribution percentage based on total bill goes from 1.4 percent for the smallest user to .4 percent for the largest. MRA's original proposal ranged from 2.8 percent for the smallest user to .4 percent for the largest. MIG's original proposal ranged from 2.4 percent to .24 percent. Indeed, the modifications found here provide that the first six tiers which comprise 99.4 percent of all customers will go from paying 79.5 percent of the Fund allocation to 74.7 percent of Fund's \$24.4 million assessment. We think our modifications are responsive to MRA's concerns and significantly lessen the variations and make this plan even fairer.

It is important to note that this standard for the first year is based on 1997 historic data. Clearly, as actual experience is gathered, it will be necessary to revisit this allocation process. It may be the case that, with the start of competition, total bills will in fact decline. Also, the impact of aggregation for those with multiple accounts may also affect the bottom line, and the appropriate technology may be developed which allows for a plan to be developed based on multiple accounts. Indeed, the first year of implementation may result in an over-collection or under-collection of the C&I portion of the Fund. At a minimum, it is expected that this funding issue will be back before the Commission in order to true up the C&I collection as required by law. At that time, changes may be appropriate including a different allocation method. Should the General Assembly choose to give additional direction to the Commission relative to the collection process, it would be welcomed.

### III. 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 issues brought forth in the parties' request for rehearing of Order No. 75935. Based upon the foregoing, the Commission has clarified and modified the directives previously set forth in Order No. 75935 and its findings herein, are adopted.

IT IS THEREFORE, this 4th day of April, in the year Two Thousand, by the Public Service Commission of Maryland,

ORDERED: (1) That the parties shall implement the directives set forth by the Commission herein and to the extent unmodified by this Order, those directives set forth in Order No. 75935;

(2) Commercial and Industrial customer contributions to the USP shall be as provided for in Revised Attachment A;

(3) That the limit on the transfer of budget funds from the USP shall be \$750,000;

(4) That electric utilities shall remit universal service fees to the Office of the Comptroller on a monthly basis;

(5) That DHR provide program reports to the Commission regarding the status of all aspects of the weatherization program, its funding requirements and any future recommendations it deems necessary or appropriate on a quarterly basis and at such other times as appropriate;

(6) That the name for the universal service program shall be the Universal Service Program or the Electric Universal Service Program as found on related educational materials;

(7) That the parameters of the weatherization component of the Universal Service Program shall be as established herein.

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/s/ Glenn F. Ivey

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/s/ Claude M. Ligon

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/s/ Susanne Brogan

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/s/ J. Joseph Curran, III

Commissioners

Catherine I. Riley, Commissioner, Concurs  
in part and Dissents in part.

**REVISED ATTACHEMENT A**

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

<b>Total Electric Bills Rendered 1/1/99 - 12/31/99</b>	<b>Total Customers Statewide (Per Segment)</b>	<b>Customer Charge (Per Month/Year)</b>	<b>Universal Service Customer Charge Revenues (Per Segment)</b>
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	\$40/480	2,691,360
\$50,000-99,999	2,813	\$60/720	2,025,360
\$100,000-199,999	1,658	\$80/960	1,591,680
\$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	\$450/5400	702,000
\$700,000-899,999	56	\$600/7200	403,200
\$900,000-999,999	27	\$900/10,800	291,600
\$1,000,000-1,999,999	87	\$1,200/14,400	1,252,800
\$2,000,000-2,999,999	13	\$1,600/19,200	249,600
\$3,000,000-3,999,999	15	\$2,000/24,000	360,000
\$4,000,000-4,999,999	6	\$2,400/28,800	172,800
\$5,000,000-5,999,999	9	2,8000/33,600	302,400
\$6,000,000-6,999,999	1	\$3,200/38,400	38,400
\$7,000,000-7,999,999	3	\$3,500/42,000	126,000
\$8,000,000-8,999,999	2	\$3,800/45,600	91,200
\$9,000,000-9,999,999	1	\$4,000/48,000	48,000
\$10,000,000-12,500,000	1	\$4,200/50,400	50,400
Over 12,500,000	4	\$4,500/54,000	216,600

		Total:	\$24,424,008
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**SEPARATE STATEMENT OF  
CATHERINE I. RILEY, COMMISSIONER**

I concur with all of the provisions of this Order with the exception of the clarification on appropriate weatherization measures. In the January 28, 2000 Order 75935, it was stated that “The Commission acknowledges that some measures defined as ‘energy conservation’ are appropriate in the context of a weatherization program.” This language clearly led various parties to believe that, at least to some extent, some low-cost energy conservation measures would be acceptable. Indeed, Office of People’s Counsel, in its request for rehearing, assumed that measures such as energy efficient lightbulbs, showerheads, and the like, were implicitly approved. Their request urged the Commission to go beyond that and include major appliances. Other parties supported similar expansions in their rehearing requests.

I concur with the Commission’s concerns regarding the adequacy of funding for weatherization and that weatherization efforts should focus primarily on a structure’s shell and related improvements thereto. However, I do not agree with the majority view that would now exclude the above basic, inexpensive energy reduction efforts. For those parties requesting rehearing in order to expand the Commission’s Order in this regard, this new interpretation is a step backward. I disagree with that outcome.

/s/ Catherine I. Riley  
Catherine I. Riley