

**ORDER NO. 89856**

Impacts of COVID-19 Pandemic on	*	BEFORE THE
Maryland’s Gas and Electric Utility	*	PUBLIC SERVICE COMMISSION
Operations and Customer Experiences	*	OF MARYLAND
	*	_____
	*	PC53
_____	*	_____

**Issue Date: June 15, 2021**

**ORDER DIRECTING THE DISTRIBUTION OF ENERGY ASSISTANCE FUNDS**

1. This Order authorizes the disbursement of public funds to reduce or eliminate residential customer utility bill arrearages, pursuant to the authority granted to the Public Service Commission under the recently-enacted Senate Bill 496 - Recovery for the Economy, Livelihoods, Industries, Entrepreneurs, and Families Act (the “RELIEF Act”). After consideration of the records of customer arrearages filed by the utilities and pursuant to the requirements of the RELIEF Act, the Commission directs that funds shall be transferred to those utilities who presented evidence of eligible arrearages.<sup>1</sup> Each utility receiving funds shall allocate those funds to reduce or eliminate residential customer arrearages in the manner described herein.

**I. Background**

2. On February 15, 2021, the Maryland General Assembly passed and Governor Lawrence Hogan, Jr. signed into law the RELIEF Act. Among other things, the RELIEF

<sup>1</sup> A chart showing the total funds allocated to each utility is attached as Revised Appendix A.

Act established the “Recovery Now Fund” as a special non-lapsing fund to address effects of the COVID-19 pandemic on Maryland’s economy. The RELIEF Act allocated a total of \$83 million to the Commission for arrearage forgiveness.

3. The RELIEF Act directed the Commission to distribute the allocations “as grants to utility companies<sup>2</sup> to assist households with utility arrearages by reducing those arrearages” in the following order: (1) eliminate all arrearages for households who have qualified for Office of Home Energy Programs (“OHEP”) Energy Assistance benefits in the past four years (“Category 1”); (2) eliminate all arrearages for residential special needs customers (“Category 2”);<sup>3</sup> and (3) eliminate the oldest arrearages (“Category 3”). The RELIEF Act also provided, as a general matter applicable to all spending authorized by the Act, that to the extent practicable, funds should be distributed proportionately by population across the State.<sup>4</sup>

4. On February 24, 2021, the Commission directed the Maryland investor-owned, municipal, and cooperative electric and gas utilities (the “Utilities”) to coordinate among themselves and with OHEP to provide data to the Commission by April 9, 2021, regarding residential customer arrearages that may be reduced or eliminated under the RELIEF Act. Between April 1 and April 9, 2021, the Commission received filings from the Utilities containing customer arrearage data for each of the three categories identified in the RELIEF Act. The Commission also received comments from OHEP regarding its plans for allocating assistance to customers also eligible for RELIEF Act funding. The

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<sup>2</sup> Including cooperatives and municipal utilities. Section 10(c)(1) of the RELIEF Act.

<sup>3</sup> The RELIEF Act does not define “special needs.” This category shall consist of customers eligible for the protections provided under the provisions of COMAR 20.31.03.01 and .02.

<sup>4</sup> Section 12(1) of the RELIEF Act.

Commission also received comments from Utilities and other stakeholders regarding the appropriate method of allocating the RELIEF Act funds.

5. On May 12, 2021, the Commission held a legislative-style hearing to discuss the Utility data that was submitted and various stakeholder proposals. Following the May 12, 2021 hearing, the Commission issued a further Order setting a schedule for updated and corrected Utility filings and to allow time for OHEP to provide energy assistance payments to customers—from its own separately appropriated funds—ahead of a final Commission determination on RELIEF Act fund allocation.

6. Between May 24 and June 1, 2021, the Commission received updated filings from the Utilities. On June 2, 2021, the Commission’s Technical Staff (“Staff”) filed a spreadsheet collecting and presenting together the Utility data.<sup>5</sup> Although the Commission had requested four years of monthly arrearage data for Category 3 arrearages, only some Utilities produced monthly data for that entire period, and a number of Utilities stated that they were unable to produce monthly data past a certain point in time as a result of limitations in their datasets.

## **II. Stakeholder recommendations regarding fund allocation**

7. The Commission received recommendations regarding fund allocation from the Exelon Utilities;<sup>6</sup> Potomac Edison; the Southern Maryland Electric Cooperative (“SMECO”); the Washington Gas Light Company (“WGL”); the Maryland Office of People’s Counsel (“OPC”); the Thurmont Municipal Light Company; the Easton Utilities

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<sup>5</sup> PC53, Item No. 225.

<sup>6</sup> Baltimore Gas & Electric, Potomac Electric Power Company, and Delmarva Power and Light.

Commission; the Town of Berlin; the Hagerstown Light Department; the Cancer Support Foundation; private citizens Jeanne Ruddock and Raymond Nevo; the Govans Ecumenical Development Corporation; and Commission Staff.

#### **A. The Exelon Utilities**

8. The Exelon Utilities proposed that the Commission allocate the relief funds to customers based upon the arrearage amounts of the population of those customers in need, or alternatively base the allocation of grant funds upon the population of customer accounts with arrearages.<sup>7</sup>

9. The Exelon Utilities also proposed that arrearages for OHEP customers be allocated first to those customers who received OHEP benefits in the current program year, then those who most recently qualified in the prior program year, etc.

10. The Exelon Utilities also proposed that, if there is insufficient funding, the Commission should direct Utilities to pay a uniform percentage (equal to the total funding level divided by the total unpaid arrearages within that category) of each customer's outstanding arrearage.

#### **B. Potomac Edison**

11. Potomac Edison recommended that the Commission first divide the total set of funds between electric and gas Utilities based on their proportion of the total statewide arrearages covered by the RELIEF Act.<sup>8</sup> Potomac Edison recommended that funds then be allocated among Utilities based on the proportion of overall statewide residential load

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<sup>7</sup> Joint filing of Exelon Utilities, Item No. 156 at 1-2.

<sup>8</sup> Item No. 157.

for each type of service (gas or electric) or on the Utility's portion of the total residential meter count for that type of service.

12. Potomac Edison also recommended that Utilities allocate funds among customers by following the categories contained in the RELIEF Act. Potomac Edison made the same recommendation as the Exelon Utilities for handling the event of insufficient funds to satisfy all categories of arrearages.

### **C. SMECO**

13. SMECO proposed that, if the Commission divides the allocation by utility type (gas or electric), funds for electric utilities could be divided based on each Utility's statewide percentage of residential meters or each Utility's portion of overall statewide residential load.<sup>9</sup> SMECO further stated that "percentage of arrearages" is not as accurate a measure of population as the other two options.

### **D. WGL**

14. WGL proposed that the Commission allocate funds between Utilities based on total Utility arrearage balances, which it argued would best serve to prevent disconnections.<sup>10</sup> WGL also recommended that the Utilities should allocate Category 3 funds to customers in proportion to their arrearage balances.

### **E. OPC**

15. OPC recommended that the Commission should first satisfy all Category 1 and Category 2 arrearages, then apply the remaining funds to Category 3 arrearages across Utilities based on their share of statewide customer accounts (with gas and electric

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<sup>9</sup> Item No. 159.

<sup>10</sup> Item No. 192.

accounts treated as separate accounts), and direct the Utilities to apply funds first to the oldest arrearages in Category 3.<sup>11</sup>

#### **F. The Municipal Utilities**

16. Thurmont Municipal Light Company, the Easton Utilities Commission, the Town of Berlin, and the Hagerstown Light Department asked that the Commission carve out \$1.0 million for distribution among the municipal Utilities in Maryland to assist them in handling growing arrearage totals from the pandemic.<sup>12</sup>

#### **G. The Cancer Support Foundation**

17. The Cancer Support Foundation recommended that the Commission allocate funds in the following order: (1) to those on payment plans and who are enrolled in OHEP; (2) to those who were on payment plans and defaulted; (3) to those who have been denied benefits by OHEP; (4) to those who are on food stamps but not receiving OHEP benefits; (5) to those on payment plans who are not eligible for OHEP benefits; and (6) to those who have been on unemployment.<sup>13</sup>

#### **H. Private Citizens and Associations**

18. The Commission also received comments from two private citizens and one community association. Jeanne Ruddock recommended that the Commission distribute funds based on means testing. Raymond Nevo recommended that the Commission should expand outreach and education to customers who have difficulty completing the OHEP qualification process, that the Commission should include families with children in virtual school as a priority category for RELIEF Act aid, and that the Commission

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<sup>11</sup> Item No. 188 at 3-4.

<sup>12</sup> Item No. 190; Item No. 193; Item No. 181; and Item No. 184.

<sup>13</sup> Item No. 174.

should disburse funds by census tract to areas with demonstrated economic need rather than by population.

19. The Govans Ecumenical Development Corporation recommended that the Commission give preference to customers who received unemployment benefits in 2020 or applied for OHEP benefits, even if they did not receive OHEP benefits.<sup>14</sup>

### **I. Commission Staff**

20. Commission Staff recommended that the Commission first allocate funds among Utilities based on residential customer count, as a proxy for population.<sup>15</sup> Staff also recommended that, if this method is followed, funds should be split between gas and electric Utilities, with an adjustment for customers who receive both gas and electric service. Staff recommended that if this method resulted in any Utility having more money allocated to it than necessary to cover all RELIEF Act eligible customers, the excess could be re-allocated to other Utilities. Staff also noted that the Commission could separate funds to each Utility based on the percentage of arrears, in which case no adjustment calculation to separate gas and electric customers would be necessary.

21. Commission Staff also recommended that, if a Utility does not receive enough funds to cover all of any given Category of customers, the Utility should allocate an equal amount of funds to each customer, but with no customer receiving more than the amount necessary to retire their arrearage.<sup>16</sup> Alternatively, Staff recommended that, in such cases, the Utility could allocate funds using a percentage basis of the arrears held by each

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<sup>14</sup> Item No. 185.

<sup>15</sup> Item No. 191.

<sup>16</sup> At the May 12, 2021 hearing, SMECO stated that it had technical barriers that would impede its ability to apply arrearage funds in this manner.

customer, though Staff noted that this approach would result in fewer customers having their total arrearage balances eliminated.

### **III. Stakeholder recommendations regarding other issues**

#### **A. OPC**

22. OPC recommended that the Commission require detailed reporting from Utilities that includes the number of customer accounts in each category, the amounts of funds credited, and information about the age of the accounts to which Category 3 funds are applied.<sup>17</sup>

23. OPC also recommended that the Commission require Utilities to immediately communicate to potential recipients of RELIEF Act funding that assistance may be coming.<sup>18</sup> OPC recommended that all communications with customers about RELIEF Act arrearage relief state that the relief is the result of actions taken by the General Assembly, the Governor, and the Commission. OPC recommended that Utilities be directed to inform customers of their options for energy assistance, whether through OHEP or Utility programs or policies, and should identify organizations and websites—such as OPC and Maryland Fuel Fund—that can help customers navigate assistance programs.

#### **B. WGL**

24. WGL recommended that the Commission require Category 3 customers to enter into a payment plan in order to receive arrearage assistance funds, in order to ensure that

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<sup>17</sup> Item No. 188 at 4.

<sup>18</sup> Item No. 188 at 4-5.

those Category 3 customers who do not receive complete arrearage forgiveness do not have their service disconnected so long as they comply with the terms of the payment plans.

### **C. Fuel Fund of Maryland**

25. The Fuel Fund of Maryland recommended that the Commission ask BGE to stop sending turn-off notices to customers covered by the RELIEF Act.<sup>19</sup> The Fuel Fund also recommended that the Commission set a cut-off date for eligibility, and asked whether the moratorium on disconnects for certain RELIEF Act-eligible customers will be lifted or continued. Additionally, the Fuel Fund asked whether the RELIEF Act funding applies to bulk fuel customers.<sup>20</sup>

### **D. Cancer Support Foundation**

26. The Cancer Support Foundation recommended that the Commission ensure that customers on payment plans who receive RELIEF Act funds have payment plans adjusted to account for their reduced balances.

## **IV. Commission Decision**

### **A. Allocation of funds**

27. Stakeholders have presented competing interpretations of the RELIEF Act language—requiring both that the Commission apply funds in order to each of three Categories of customers, and that the RELIEF Act funds should be distributed proportionally throughout the state to the extent practicable. Having considered the

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<sup>19</sup> At the hearing on May 12, 2021, the Fuel Fund representative stated that this issue has been resolved.

<sup>20</sup> The language of the RELIEF Act references utility customers and not bulk fuel customers. As such, the Commission cannot provide RELIEF Act funds to offset bulk fuel customer arrearages.

statutory language and the arguments presented, the Commission finds that the intent of the RELIEF Act can best be achieved with a two-step process. First, the Commission will apportion funding to each of the three Categories of customers in statutory order. Second, if and where funding is insufficient to retire all arrearages for a given Category, the Commission will give consideration to distributing funds in proportion to population to the extent practicable and consistent with the statutory directives.

28. The most recent customer arrearage data provided by the Utilities shows approximate totals of \$55.9 million in Category 1 arrearages and \$3.0 million in Category 2 arrearages. The allocated RELIEF Act funds are sufficient to retire all of Category 1 and Category 2 for all Utilities. After retiring Categories 1 and 2, there remain approximately \$24.0 million in funds for allocation to Category 3, which contains over \$217 million in arrearages.

29. The RELIEF Act specifies that Category 3 arrearage funding should be applied to the oldest arrearages first. Unfortunately, several Utilities were either unable to categorize their arrearage amounts by age or were only able to do so for a few months. Under those circumstances, the Commission finds that it cannot directly apportion the Category 3 funds based on the distribution of arrearages by age because funds would go overwhelmingly to the customers of Utilities that were able to produce full monthly arrearage age data. The resulting distribution of funds would be both unfair to customers of other Utilities and would also conflict with the statutory directive to distribute funds proportionally by population because large areas of the state would receive no Category 3 funding. Because the Commission cannot fairly apportion Category 3 funds based on the

age of arrearages, the Commission must instead apportion funds between Utilities based on another metric.

30. In deciding on an appropriate apportionment mechanism, the Commission has considered proposals from stakeholders including, but not limited to, recommendations that the Commission allocate funds based on arrearage amounts, population, residential load, meter count, or customer count. Under proposals where apportionment is made based on meter or customer count as a proxy for population, stakeholders have suggested different ways of treating gas and electric customers separately.

31. Given the broad statutory language, the limited availability of data, and the competing interests of customers and Utilities, there is no perfect mechanism for apportioning Category 3 funding. The amount of funds available are substantial, but the arrearage amounts owed by Maryland ratepayers are even greater. The Commission finds that the advantages of allocating funds to Utilities based on the share of total arrearages make it the most reasonable among the imperfect solutions available. The total share of arrearages roughly resembles the distribution of customer counts, itself a rough proxy for population. It also has the advantage—compared to methods that focus on customer count or residential load—that it does not create unfairness or administrative complications when attempting to account for whether customers receive gas service and by which Utility. Finally, it directs money in proportion to total need and should therefore provide the most help to the neediest customers, who are at greatest risk of disconnection.

32. Utilities must then apply those funds to their Category 3 arrearages, starting—where data permits—with the oldest arrearages. Where a Utility has more arrearages of a

given age than it has funds remaining (or where by reasonable efforts cannot locate data sufficient to place an age on arrearages), the Utility should allocate available funds across the pool of eligible customers by retiring an equal percentage of each customer's arrearage.<sup>21</sup>

33. The Commission also considered recommendations to weigh additional factors, including but not limited to the receipt of unemployment benefits, or whether a customer applied for but was denied OHEP benefits, or fit the eligibility standard for OHEP benefits but did not receive OHEP benefits. The Commission declines to implement these suggestions, for which statutory authority and usable data are lacking.

34. The Commission also considered the request by several municipal Utilities that the Commission earmark \$1 million for municipal Utilities. Although the Commission makes no determination on the harm that those Utilities have endured as a result of the COVID-19 pandemic, the statutory directives of the RELIEF Act do not specifically provide for a carveout of funds for a specific class of Utility. Nonetheless, the municipal Utilities will receive substantial funds under this Order, including funds for the complete retirement of all Category 1 and 2 arrearages. Although the Commission has not received legislative authorization to target funds to aid utilities in distress, any utility experiencing financial distress or other issues should promptly inform the Commission.

35. The Commission finds that requiring a customer to enter into a payment plan in order to receive RELIEF Act funds, as suggested by WGL, is unnecessary and overly restrictive. For any eligible customer already on a payment plan at the time of arrearage

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<sup>21</sup> To borrow the mathematical example used in the filings, if there is \$100 in available funding and \$200 in eligible arrearages then each customer should receive 50% of their outstanding balance.

forgiveness and whose arrearage is not fully forgiven, the Commission directs the Utilities to automatically recalculate and re-amortize the payment plan over the remaining months to account for the reduced balance following arrearage forgiveness.

36. The amount of RELIEF Act funds allocated to each Utility covered by this Order is set forth in Appendix A.

### **B. Window of customer eligibility**

37. The RELIEF Act did not contain an end date for customer eligibility for arrearage relief, however the Commission finds that one is necessary for the administration of the process approved herein. In order that the greatest number of households with demonstrated need receive arrearage forgiveness, the Commission finds that an eligibility cutoff as of the end of June 30, 2021 is appropriate.<sup>22</sup> Customers must meet eligibility requirements for Category 1 or Category 2 no later than June 30, 2021 to receive funds as part of those Categories. Arrearages accumulated after June 30, 2021 shall not be eligible. The Commission therefore directs that Utilities shall work with OHEP to obtain updated lists of eligible Category 1 customers when they become available.

38. Because the Commission in this Order is setting allocations based on data from May 2021 but allowing customer eligibility to be determined based on updated data, arrearages in each category are likely to be larger than those relied on in setting allocations among Utilities. Utilities should allocate funds to retire all eligible Category 1 and 2 customer arrearages before allocating any funds to Category 3 arrearages.

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<sup>22</sup> The RELIEF Act requires the Commission to distribute all appropriated funds by the end of the Fiscal Year, on June 30, 2021.

### **C. Reporting requirements**

39. By October 1, 2021, each Utility shall file with the Commission a list of all eligible customer accounts (identified by customer account number and address); the Category under which the customer was eligible for RELIEF Act funds; the amount of arrearage owed as of June 30, 2021 (including any amount amortized into a payment plan or other deferred payment arrangement); the amount of RELIEF Act funds applied to that customer's account; the date that funds were applied to that customer's account; and (for Category 3 customers only) the age of the arrearage at the time of forgiveness (to the extent such data exists). Customer lists should be in active, Microsoft Excel-readable format. Also in that filing, each Utility shall state whether any funds remain unexpended and, if so, why.

### **D. Communications with customers about RELIEF Act funds**

40. At the May 12, 2021 hearing, the Utilities in attendance stated that they had no issues with developing bill messaging to communicate with customers regarding the application of RELIEF Act funds to address ratepayer arrears. The Utilities are directed to work with OPC and Staff to develop bill messaging materials and file a copy of their draft materials (or a notice that they have been unable to reach agreement on bill messaging) with the Commission by June 21, 2021. The messaging should ultimately state that funding for this arrearage assistance comes from the State of Maryland, state the amount of funds applied to the account of the customer receiving the bill, and explain the impact of RELIEF Act funds on any pre-existing payment plan.<sup>23</sup> The messaging should also inform customers of their options for energy assistance, including OHEP and

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<sup>23</sup> Because that information will not be available until after June 30, Utilities need only file templates.

Utility programs or policies, and should also identify organizations and websites—including OPC and the Maryland Fuel Fund—that can help customers navigate assistance programs.

#### **E. Resumption of disconnections**

41. In its February 24, 2021 Order, the Commission continued the moratorium prohibiting the termination of service to customers in Category 1 and Category 2 due to non-payment.<sup>24</sup> For each Utility, after the later of November 1, 2021 or 30 days after the date when all funds granted by this Order to that Utility have been applied in full to customer arrearages, the moratorium shall be lifted and the Utility may resume disconnection activities in accordance with the Commission’s established regulations. However, the Commission’s prior directives regarding working with customers to develop payment plans and avoiding disconnections shall remain in effect.<sup>25</sup>

**IT IS THEREFORE**, this 15<sup>th</sup> day of June, in the year of Two Thousand Twenty-One, by the Public Service Commission of Maryland

**ORDERED:** (1) That \$83 million in RELIEF Act funds shall be distributed to the Utilities in the amounts specified in Appendix A;

(2) That the Utilities shall apply the RELIEF Act funds to reduce or eliminate customer arrearages in the manner described above; and

(3) That the Utilities shall comply with the other requirements specified above.

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<sup>24</sup> Order No. 89745 at 4-5.

<sup>25</sup> Item No. 37, Motions 2-5; Order No. 89636 at 10.

*/s/ Jason M. Stanek* \_\_\_\_\_

*/s/ Michael T. Richard* \_\_\_\_\_

*/s/ Anthony J. O'Donnell* \_\_\_\_\_

*/s/ Odogwu Obi Linton* \_\_\_\_\_

*/s/ Mindy L. Herman* \_\_\_\_\_

Commissioners

**REVISED APPENDIX A**

<b>Utility</b>	<b>Total Received</b>
A&N Electric Cooperative	\$911.98
Town of Berlin	\$27,255.04
Baltimore Gas and Electric Company	\$49,715,595.39
Chesapeake Utilities Corporation	\$155,470.60
Choptank Electric Cooperative Inc.	\$281,555.56
Columbia Gas of Maryland, Inc.	\$803,025.89
Delmarva Power & Light Company	\$7,967,714.62
The Easton Utilities Commission	\$60,897.64
Elkton Gas Company	\$70,664.28
Hagerstown Light Department	\$200,497.67
Potomac Electric Power Company	\$12,492,356.08
The Potomac Edison Company	\$4,025,368.95
Sandpiper Energy Inc.	\$35,824.36
Southern Maryland Electric Cooperative, Inc.	\$1,388,687.45
Somerset Rural Electric Cooperative Inc.	\$3,183.69
Thompson Distribution Partners, LLC	\$9,303.23
Thurmont Municipal Light Company	\$24,063.94
UGI Utilities, Inc.	\$1,544.18
Washington Gas Light Company	\$5,725,168.52
Williamsport Municipal Light Plant	\$10,910.93
<b>Total</b>	<b>\$83,000,000.00</b>