



## Comments by Chesapeake Climate Action Network, Environment Maryland, Interfaith Power and Light, and Maryland League of Conservation Voters to the Maryland Energy Administration regarding EmPOWER Maryland Planning for 2020

July 30, 2012

### Introduction

Chesapeake Climate Action Network (CCAN), Environment Maryland, Interfaith Power and Light, and Maryland League of Conservation Voters would like to thank the Maryland Energy Administration (MEA) for offering us the chance to provide feedback on EmPOWER Maryland and offer suggestions on how it could be improved upon.

Because of the success of utility-run peak demand reduction programs, we do not recommend any change in how those programs are administered. The following recommendations apply to EmPOWER's electricity savings goals.

Although EmPOWER Maryland is not on track to meet its 2015 goals for electricity savings, the program has still achieved notable successes. To date, over 430,000 Maryland families have taken advantage of utility programs to reduce their energy consumption, resulting in anticipated lifetime savings of \$2.6 Billion for these investments. Considering that utilities have spent approximately \$214 Million administering these programs, these savings represent a very impressive return on investment and are a testament to the fiscal prudence of investing in energy efficiency and conservation programs.

In terms of meeting statutory goals however, Maryland's results have been less impressive. According to a recent analysis by the American Council for an Energy Efficiency Economy (ACEEE), Maryland was one of only two states nationwide with energy efficiency resource standards failing to meet its targets. **MD utilities only achieved 44 percent of their 2011 interim goal, and 19 percent of their 2015 goal. According to the "EmPOWER Planning for 2020" presentation by MEA on June 29, 2012, Maryland is only on track to achieve an 8.4% per-capita reduction in energy consumption by 2015, well short of the state's goal of 15%.<sup>1</sup>**

<sup>1</sup> MEA, *EmPower Planning for 2020*, (June 2012)

Maryland utilities would have to increase their annual electricity savings to a rate of 2.28% as a percent of their sales in order to reach their 2015 goals

Utility	2011 EmPOWER Maryland Energy Savings Goal (MWh)	Percent of 2011 EmPOWER Goal Projected to Achieve (in original 2008 filing)	Percent of 2011 EmPOWER Goal Actually Achieved
Potomac Edison	122,664	90%	87%
BGE	2,052,948	52%	44%
Delmarva	205,846	54%	26%
Pepco	685,738	65%	42%
SMECO	94,229	88%	64%
<b>Total</b>	<b>3,161,425</b>	<b>63%</b>	<b>44%</b>

A big reason for this shortfall is simply that Maryland is not investing as much as it could to reach its goals. **Maryland spends less per-capita than other high-performing New England States. Program success takes dedicated and lasting investment. Maryland program administrators must have the ability to spend more on programs that have a higher potential to save energy.** Though bill impacts may increase, the experience of other states has proven that significant investments are necessary to obtain significant results.

The states that are spending more on efficiency are also seeing better results. Maryland is spending less per-capita than many other New England and Mid-Atlantic states, and unsurprisingly, we are also seeing fewer savings as a percentage of our retail sales.

From 2009 to 2011 Maryland’s rate of growth grew from .23 percent in to .64 percent. **To achieve the savings levels reached by other high-performing states, we believe that a significant number of changes will have to be made at the legislative and regulatory levels.** These changes include:

**Legislative:**

1. **Extend the EmPOWER mandate from 2015 to 2020 for electricity and natural gas.**
2. Structure the efficiency mandate as an **“all cost-effective” approach** with efficiency targets set through a stakeholder advisory process.
3. **Create a Public Benefits Fund** to pool the state’s financial resources into a single funding mechanism that can be used to finance Maryland’s long-term clean energy goals.
4. **Increase the level of RGGI auction funds going towards energy efficiency and conservation programs** to *at least* their original statutory level of 46 percent.

**Regulatory:**

1. **Create incentives that reward exceptional utility program performance and penalize poor performance.** Specifically, the Public Service Commission (PSC) should consider the use of third party efficiency utilities in instances where individual utilities consistently fail to meet their goals.

2. **Broaden the PSC’s cost-effectiveness test** in order to approve utility programs that can achieve savings sufficient to meet Maryland’s goals.
3. Direct utilities to **make “on-bill financing” available** to ratepayers to fund efficiency projects.

## **Legislative Suggestions**

### **Extend the EmPOWER Mandate from 2015 to 2020 for Electricity and Natural Gas**

Maryland Department of Environment’s (MDE) 2011 Greenhouse Gas Reduction Act Draft Plan calculates that the greenhouse gas (GHG) reduction potential of **extending the EmPOWER mandate to a 20 percent per-capita reduction by 2020 is 8.8 MMtCO<sub>2</sub>e that would otherwise be emitted**. That is a 1.53 MMtCO<sub>2</sub>e greater reduction than if the current 2015 goal was achieved but not extended. Because Maryland has one of the most aggressive GHG reduction goals in the country, it is imperative that we implement our GHG reduction initiatives as aggressively as possible.<sup>2</sup>

In addition to the avoided emissions in 2020, other benefits of extending the mandate include reductions in nitrogen dioxide, sulfur dioxide, and mercury emissions. Combined, these reductions will help Maryland meet its goals to clean the Chesapeake Bay, meet air quality standards for ground-level ozone and fine particulate matter, comply with federal regional haze requirements, and reduce mercury emissions. **Also, EmPOWER programs can support about 4,000 jobs, \$500 Million in economic output, and \$200 Million in wages on average annually.**<sup>3</sup>

Given the benefits in terms of avoided energy costs, avoided emissions, and increased jobs and economic output that EmPOWER has already created in Maryland, we think extending the program to 2020 is a logical step for the state to take.

### **All Cost-Effective Approach with Targets Set Through Stakeholder Process**

**While it is useful to compare current electricity usage to a baseline year as a means of tracking electricity sector trends over time, we believe that this is an ineffective means of setting and enforcing energy efficiency and conservation goals.** The method of setting per-capita efficiency goals measured against a baseline year allows random variability to exert undue influence over the state’s ability to meet its policy goals.

For example, the New York State Energy Research and Development Authority (NYSERDA) issued a report in 2010 that found that from 2007 to 2009, among the ten Northeastern and Mid-Atlantic States that participated in the Regional Greenhouse Gas Initiative (RGGI), electricity consumption

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<sup>2</sup> Maryland. Department of the Environment. *Appendix C – Maryland Climate Policies*. By Maryland Department of the Environment. N.p., 21 Mar. 2012.

<sup>3</sup> Maryland. Department of the Environment. *Maryland’s Plan to Reduce Greenhouse Gas Emissions*. By Maryland Department of the Environment. N.p., 31 Dec. 2011.

decreased by 26,945 GWh, or by 5.7 percent<sup>4</sup>. During that time period, Maryland's electricity consumption decreased by 2,802 GWh, or by 4.3 percent<sup>5</sup>. NYSERDA goes on to say that non-policy factors such as mild weather and the economic downturn were responsible for 40 percent and 43 percent of that consumption reduction respectively, while energy efficiency and customer-sited generation was only responsible for 15 percent of that decrease.

Because of the natural variability of economic and weather patterns, we do not believe that using a top-down electricity consumption methodology measured against a baseline year fully reflects the progress that utilities are making towards achieving their goals. **Rather we believe that utilities should pursue all cost-effective energy efficiency and conservation options, and that precise savings targets should be set by a working group composed of Maryland utilities, concerned stakeholders, energy efficiency experts, and representatives from MEA and PSC. The participants in this working group would be experts and consultants paid for by the represented stakeholders to ensure that realistic yet rigorous goals are set each year.**

Other states such as Massachusetts, Rhode Island, Connecticut, California, and others have done exactly that. Their statewide efficiency standards (1) legislatively require utilities to procure all cost-effective resources; and (2) establish a planning process between utilities, stakeholder efficiency groups, and public utility commissioners to set appropriate savings targets<sup>6</sup>.

### *Massachusetts*

An "all cost-effective" approach, as defined by The Massachusetts Green Communities Act 2008, requires that utilities meet all electric and natural gas needs with energy efficiency and demand reduction resources that are cost effective or less expensive than new supply. The law also creates an energy efficiency advisory council (EEAC), which is an eleven member council with one member representing each of the following: (1) residential consumers, (2) the low-income weatherization and fuel assistance program network, (3) the environmental community, (4) businesses, including large C&I end-users, (5) the manufacturing industry, (6) energy efficiency experts, (7) organized labor, (8) the department of environmental protection, (9) the attorney general, (10) the executive office of housing and economic development, and (11) the department of energy resources.

Rather than set the annualized efficiency target legislatively, the utilities are tasked with creating comprehensive three-year efficiency plans that include all cost-effective procurement options to the EEAC for review. After EEAC reviews and approves the plan, it is sent to the Department of Public Utilities (DPU) for analysis and cost-effectiveness testing. After a collaborative review process between the utilities and the EEAC, three-year savings targets (both numerical and as a percentage of retail sales) are agreed upon and sent to DPU for final approval.

**We favor this approach to setting targets in Maryland. The reasons for supporting an all cost-effective approach are:**

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<sup>4</sup> New York State Research and Development Authority. *Relative Effects of Various Factors on RGGI Electricity Sector CO2 Emissions*. Draft White Paper. N.p.: n.p., 2010.

<sup>5</sup> United States. Department of Energy. Energy Information Agency. *DOE/EIA - 0348 (01)/2: State Electricity Profiles 2007 and 2009*. N.p., n.d.

<sup>6</sup> Sciortino, Michael, Seth Nowak, Dan York, and Martin Kushler. *Energy Efficiency Resource Standards: A Progress Report on State Experience*. Rep. no. U122. American Council for an Energy-Efficient Economy, June 2011.

1. Energy efficiency, which, on average, costs about half to one-third as much as new power generation, is the least expensive and cleanest way to meet customer energy resource needs. Enacting policies that make efficiency the first order resource not only helps to meet energy needs, but fosters economic development and ensures a cleaner, healthier environment.
2. This approach is favored by some of the most successful energy efficiency states in the country. In its 2011 Regional Roundup, Northeast Energy Efficiency Partnerships included Massachusetts, Connecticut, and Rhode Island on their list of states that are “going the distance,” the highest ranking. These states all set annual savings targets through a regulatory stakeholder committee process, with an “all cost-effective” legislative mandate.
3. A more inclusive process yields stronger results. A diverse set up stakeholders collaborating directly with utilities and state agencies is better able to consider the needs of all Marylanders and make decision based on sound science than are lawmakers in Annapolis.
4. This process would give regulators more flexibility to modify the goals and make other programmatic changes based on actual program results and in the face of unforeseen changes in consumption such as those driven by economic forces and natural weather patterns.

## **Public Benefits Fund**

From 1991 to 1998, Maryland energy and conservation programs collected and spent over \$500 Million. **In 1998 alone, Maryland achieved a documented savings rate of 3.5 percent of electric sales<sup>7</sup>. In 1999, following the Electric Choice and Restructuring Act, the Maryland electricity market was “deregulated”, and these programs were abandoned and electricity consumption increased<sup>8</sup>. In the seven year period that followed, Maryland residential electricity consumption increased by 2.4 percent annually. Although the 1999 law retained the PSC’s ability to require utility efficiency programs, and BGE, PEPCO, and Alleghany Power were enabled to charge Public Benefit Charges of up to \$.001/kwh, no utilities chose to propose or spend any significant amount under these provisions<sup>iv</sup>.**

**By contrast, other states such as New York, California, and Massachusetts that also deregulated their electricity markets also created Public Benefits Funds (PBF) to fund energy efficiency.** A PBF is a pool of resources typically created by levying a small fee or surcharge on customers' electricity rates, which can then be used by states to invest in clean energy supply. Advantages of PBFs are that they: combine a range of clean energy funding mechanisms into one single source, allow states to maintain flexibility regarding the types of incentives and programs that are offered, and they allow states to fund long-term benefit goals such as EmPOWER Maryland<sup>9</sup>. New York's system benefits charge (SBC), established in 1996 by the New York Public Service

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<sup>7</sup> Prindle, Bill. *Energy Efficiency in Maryland's Electricity Future*. Rep. no. E077. American Council for an Energy-Efficient Economy, Sept. 2007.

<sup>8</sup> Center for Integrative Environmental Research, Resources for the Future, The Johns Hopkins University, Towson University, and University of California Merced. "The Role of Energy Efficiency Spending in Maryland's Implementation of the Regional Greenhouse Gas Initiative." N.p., Oct. 2008. Web.

<sup>9</sup> "Public Benefits Funds." *EPA*. Environmental Protection Agency, 15 Mar. 2012. Web. <<http://www.epa.gov/chp/state-policy/funds.html>>.

Commission (PSC), supports energy efficiency, education and outreach, research and development, and low-income energy assistance.

**Currently, Maryland utilities fund efficiency and conservation programs and recover those costs through an EmPOWER surcharge on ratepayer bills. This system has advantages and disadvantages. The advantage of a cost-recovery system is that it does not place a cap on the amount that utilities could potentially invest in efficiency and conservation programs. The disadvantage though is that if the PSC does not approve programs sufficient to meet the state's goals, utilities will wind up underinvesting in EmPOWER programs.**

**One way that we would like to see Maryland increase its rate of efficiency savings is through the creation of a PBF.** Maryland has various funding mechanisms for energy efficiency as well as other clean energy climate goals that would benefit from being consolidated into a single PBF. The main two sources of funding for efficiency and conservation programs are the Strategic Energy Investment Fund (SEIF) and EmPOWER surcharges collected on ratepayers' bills. SEIF is predominately funded through Regional Greenhouse Gas Initiative (RGGI) auction proceeds and alternative compliance payments from the Maryland Renewable Portfolio Standard, but also federal grant money. SEIF is a critical means of funding energy efficiency and conservation in the state. In FY 2010 and FY 2011, SEIF invested approximately \$18.3 Million into energy efficiency and renewable energy programs that will result in approximately \$78 Million in energy savings over their lifetimes. These investments also saved approximately 41,800 MWh annually<sup>10</sup>.

**EmPOWER surcharges, on the other hand, are collected and administered by five separate utilities** to recoup the costs of programs in their respective service areas. At the end of 2011, the utilities spent a combined \$214 Million on energy efficiency and conservation programs, and saved approximately 1,401,751 MWh of electricity. While these results are impressive, **we think that even more energy savings could have been realized if all the efficiency and conservation programs administered since the EmPOWER program began had been run from a single budget. Five separate utilities with five separate budgets administering similar programs, all with the same goal of reducing electricity usage, is bound to be less effective than a streamlined energy efficiency and conservation process using a single PBF.** This point was underscored by the National Energy Efficiency Partnerships when they said of EmPOWER Maryland that "true statewide coordination among the utilities in how they plan, market, deliver and evaluate their programs could improve clarity and consistency."

**An example of how this has been implemented successfully is in New York State. In 2009 they passed the Good Jobs Green New York Act which created the Residential Retrofit Investment Fund (RRIF).** This fund drastically expanded the state's commitment to building a green infrastructure by leveraging systems benefit dollars, RGGI auction proceeds, and third party capital. **The fund creates a secure location for money to be administered at a centralized location.**

Another useful example is Massachusetts's Energy Efficiency Charge (EEC) and their Energy Efficiency Reconciliation Factor (EERF). Every ratepayer in Massachusetts pays an EEC of \$.0025/kwh into the PBF. In addition, an EERF may be applied to ratepayer bills to make up the difference between actual expenditures for programs administered by utilities and revenues collected

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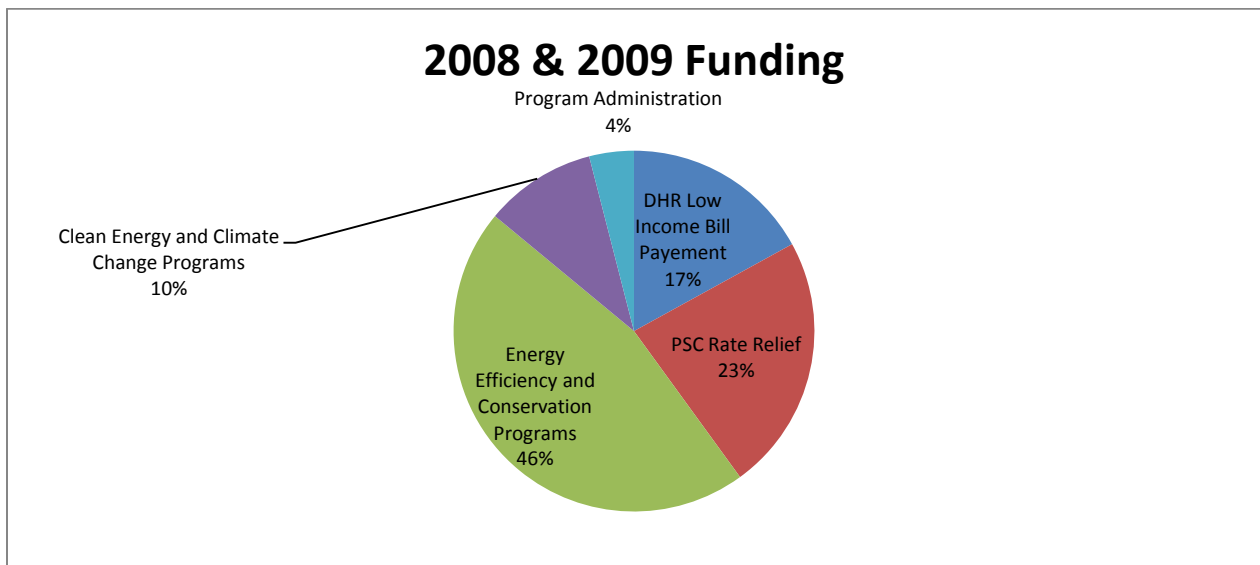
<sup>10</sup> "Maryland Energy Administration." *Maryland Energy Administration*. Clean Energy States Alliance, n.d. Web. <http://www.cleanenergystates.org/membership/core-member-profiles/maryland-energy-administration/>

from the EEC, calculated differently for residential, residential low-income, and C&I customer classes. The EEC creates a dedicated pool of money that can be spent on energy efficiency, and the EERF gives utilities the flexibility to spend the amount necessary, beyond what is collected through the EEC, to reach the Commonwealth's annualized savings targets.

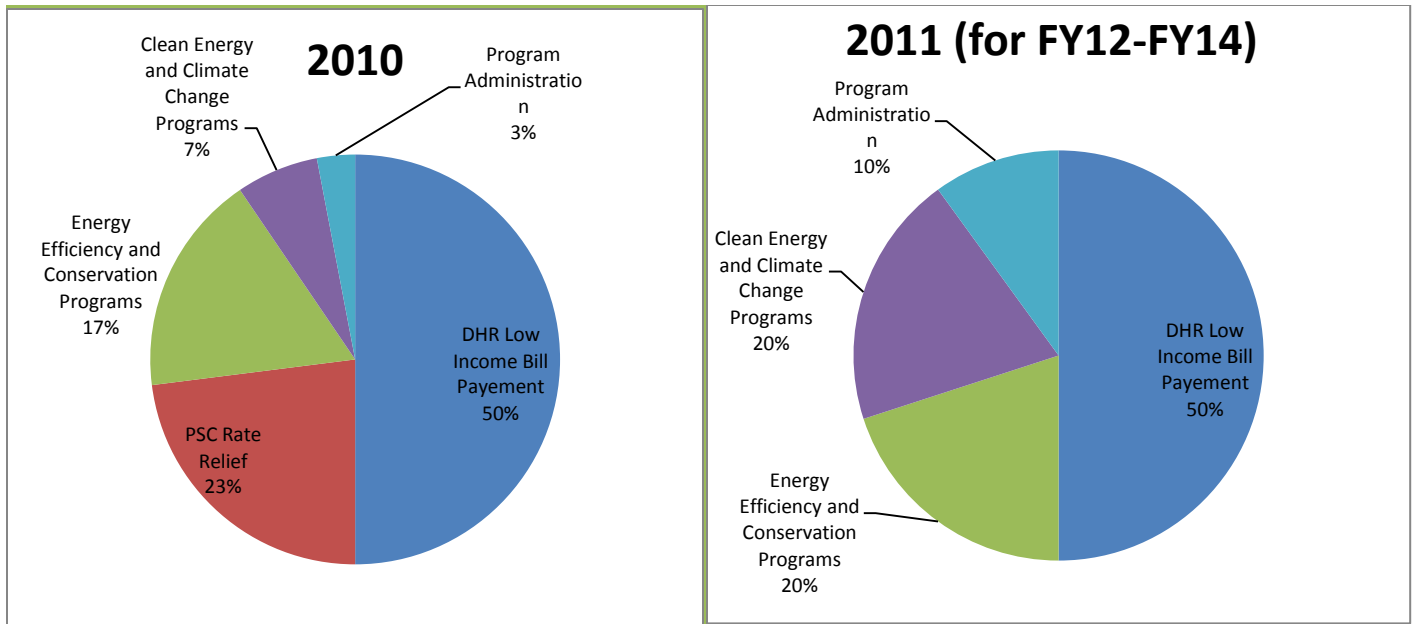
**In order to streamline the process and spend efficiency dollars more effectively in Maryland, we recommend that a PBF be established to provide a single source of funding for energy efficiency and conservation projects and foster collaboration between utilities. However, unlike New York and some other states that also have PBFs, we recommend that ratepayer funding continue to come from a cost-recovery surcharge rather than a fixed public benefits surcharge. The rationale behind utilizing a cost-recovery surcharge rather than a fixed public benefits surcharge is to avoid putting a ceiling on the amount that can be spent across the state to achieve EmPOWER goals. If, however, it becomes apparent that utilities are not requesting the funds necessary to carry out their goals, or if state programs fall short of their necessary funding levels, the stakeholder advisory committee should consider adopting a fixed surcharge on ratepayer bills.**

### **Increase the Percentage of RGGI Auction Revenue Dedicated to Efficiency Improvements**

When the Strategic Energy Investment Fund (SEIF) was created in 2008, its original allocation of funds was set by law as follows:



Since then however, SEIF funds have been shifted away from long-term energy efficiency improvements, and re-directed towards short-term rate payer relief.



We see this as a source of concern, because while providing low-income bill assistance is a worthy goal, it provides only short-term rate relief. Energy efficiency and conservation programs, on the other hand, decrease ratepayer bills for years to come. The 430,000 Maryland families that have thus far taken advantage of these programs will save \$2.6 Billion over the lifetime of their investments<sup>11</sup>.

Vermont offers a useful example of good governance in how that state manages its PBF. To prevent lawmakers from diverting funds like Maryland has done with SEIF, Vermont separates their PBF from the appropriations process. **Ratepayer funds go from utilities to a third-party fiscal agent, and never enter the state budget or appropriations process. By this method they ensure that ratepayer funding cannot be diverted for non-energy purposes<sup>x</sup>.**

Moving forward, to provide the funding necessary to rapidly increase Maryland’s annual savings performance, we recommend that the percentage of SEIF funds spent on energy efficiency and conservation programs be increased to *at least* its original level of 46 percent. Furthermore, like the Vermont model, SEIF funds should be combined into a single PBF with ratepayer money that is dedicated towards clean energy and efficiency, and kept separate from the appropriations process.

**Regulatory Suggestions**

**Penalties/Rewards for Compliance**

<sup>11</sup> Maryland Energy Administration. "Maryland Reaches Milestones in Energy Efficiency Goals." *MEA Newsletter* (June 2012): 1.



**Many other state programs provide sticks, carrots, or both for utilities that do or do not meet their efficiency goals. The Maryland Public Service Commission (PSC), on the other hand, does not impose a penalty on utilities that fail meet either their EmPOWER goals or the goals that they were projected to achieve according to their filings with PSC for approved programs.** In September 2011 MEA recommended that the PSC collaborate with a working group of interested stakeholders to “adopt policies for both incentives for exceptional utility program performance and penalties for poor performance.” The goal of these incentives would be to “change utility corporate culture so that the utility will embrace energy efficiency as a high priority and cost effective resource.”<sup>12</sup>

**Under the status quo, utilities have a disincentive to provide adequate efficiency programs because when customers use less energy, utilities earn less revenue.** The ACEEE released a report in 2011 that found that many states offer shareholder incentives mechanisms to encourage utilities to reach their targets. They provided a list that we have included below that lists the incentives and penalties that different states offer to encourage their utilities to meet their savings targets. The conclusion of their study was that **incentives should be linked to utility achievement, and that they should be set to encourage innovation and motivate utilities to exceed the savings goals. They also encouraged utility buy-in by providing regulatory certainty and stakeholder involvement**<sup>13</sup>.

States	Type	Award or Penalty	Threshold/Trigger	Cap	Penalty
Arizona	SB	10% of net benefits	No. Minimum spending requirement	10% of program costs	No
California	SB	9-12% of net benefits	85% of savings goal met	\$150 Million per year (reward)/ \$150 per year (penalty)	Yes
Colorado	SB	0.2-12% of net benefits	81% of savings goal met	20% of program costs	No
Connecticut	PT	1-8% of program costs	70% of energy efficiency goals met	8% of program costs	No
Georgia	SB	15% of net benefits	50% of projected participation met	None	No
Hawaii	SB	1-5% of net benefits	100% of savings goals met	5% of net benefits; \$4 Million	Yes
Idaho	SB	1-10% of net benefits	7-11.7% of new homes in program	10% of program benefits	Yes
Illinois	P	Civil Penalty	Civil payment if failure to meet goals persists 2 years; transfer implementing authority to state if failure persists 3 years	\$1 Million	Yes
Kentucky	SB	10% of net benefits	100% of savings goals met	10% of program costs	No
Massachusetts	PT	3.75-5.5% of program costs	75% of savings goals met	5.5% of program costs	No

<sup>12</sup> Maryland. Maryland Energy Administration. *Recommendations for Enhancing Utility Energy Efficiency Program Performance: EmPOWER Maryland Plans for 2012 to 2014*. By MEA. N.p., 1 Sept. 2011.

<sup>13</sup> Hayes, Sara, Steven Nadel, Martin Kushler, and Dan York. *Carrots for Utilities: Providing Financial Returns for Utility Investment in Energy Efficiency*. Rep. no. U111. American Council for an Energy-Efficient Economy, Jan. 2011. Web.

Minnesota	SB	Based on Spending	90% of savings goals met	150% of savings goals/30% of budget	No
Nevada	ROR	5% of DSM equity	No	5% of program costs	No
New Hampshire	PT	8-12% of program costs	65% of planned savings and 1:1 cost effectiveness achieved	12% of program costs	No
Ohio	SB	50-75% of net value of avoided costs	65% of savings goals met	15% of program costs	No
Oklahoma	SB	15% of program costs or 25% of net savings	None	Fixed; \$2.7 million in 2010	No
Pennsylvania	P	Civil Penalty	Failure to meet goals	\$20 Million	yes
Rhode Island	PT	4.4% of program costs	60% of savings goals met	125% for savings metric; \$150,000 for performance metric	No
Texas	SB	1% of net benefits up to cap	102% of savings goals met	20% of program costs	No
Washington	PT/SB	5-100% of net benefits	100% of savings goals met	150% of savings goal	Yes
Wisconsin	ROR	Same as other investments	None	No	No

\*SB=Shared Benefits, PT=Performance Target, ROR=Rate of Return, P=Penalty

**We would invite PSC to collaborate with stakeholders to adopt a system of rewards and/or penalties, using the above states as models, which work best for Maryland.**

*Third-Party Efficiency Administrators: Learning from Other States*

Other states have had experiences with **third-party efficiency utilities** either on their own or in conjunction with utility programs or state agencies. Below we cite some of lessons Maryland can learn from other states' experience with assigning efficiency programs to third parties. Chief among these lessons are the value that third parties sometimes provide and how **they can be used in place of those utilities that fall short of their goals.**

*Vermont's Successful Third-Party Efficiency Administrator*

Vermont had similar issues meeting its efficiency goals before the creation of its third-party efficiency utility with 22 utilities implementing their own programs with varying levels of success. Some utilities maintained a much stronger interest in energy efficiency than others. The Vermont Department of Public Service (DPS) and the utilities regularly disagreed about the levels of investment and the kinds of programs in which the utilities should engage. In addition, there was no coordination among the utilities in their marketing or product procurement.

As a result, Vermont created a third-party efficiency utility called Efficiency Vermont. Efficiency Vermont is a single-purpose organization whose financial survival is based on whether it meets the energy savings goals that it agrees to in its three year contracts. The funding for this utility comes from a system benefit fund paid by ratepayers via a bill surcharge, RGGI auctions and the ISO New England Forward Capacity Market; a third-party fiscal agent then collects those funds and pays Efficiency Vermont. Funds do not come from the state budget or through appropriations from the

legislature.<sup>14</sup> By statute, the funds collected for Efficiency Vermont may not be used to meet the general obligations of the state.<sup>15</sup>

Efficiency Vermont is administered by Vermont Energy Investment Corporation (VEIC), an independent nonprofit energy services organization under an appointment by the Vermont Public Service Board. VEIC is a Vermont-based company that has designed and implemented energy efficiency programs since 1986. Efficiency Vermont's work undergoes rigorous review and verification through an independent financial audit, a savings verification process conducted by the Vermont DPS, and by a legislatively mandated independent audit.<sup>16</sup>

Vermont has been able to achieve considerable gains in efficiency with the Vermont Public Service Board reporting a decline in electrical sales of 138,619,929 kWh from 2005 to 2008.<sup>17</sup> Other states have taken notice of Vermont's success and have legislated efficiency programs that are delivered mostly or partially through third-party administrators. These states include Delaware, Hawaii, Indiana, Maine, Michigan, Oregon, Wisconsin, while other states such as Colorado and Connecticut are still considering the option.<sup>18</sup>

#### Oregon's Problems with Its Third-Party Efficiency Administrator

The Oregon Public Utilities Commission (PUC) created the Energy Trust of Oregon as a result of state legislation that required the PUC to identify a third-party efficiency program administrator to conduct a suite of energy efficiency programs for different markets. Unlike third-party administrators in Vermont and Wisconsin, the Oregon administrator was created as a new organization by the PUC. As a new organization, some have reported initial start-up hurdles such as the start-up expenses associated with marketing and structuring the new organization as well as working out tensions between utilities and state agencies that were already administering separate efficiency programs.

#### Wisconsin and a Planned Transition

In October 1999, the Wisconsin Legislature created a public benefits program without deregulating Wisconsin's electric markets. This transitioned primary responsibility for low-income energy

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<sup>14</sup> Matthew Brown, *Models for Administering Ratepayer-Funded Energy Efficiency Programs*, [http://ase.org/sites/default/files/EE\\_Admin\\_Structures.pdf](http://ase.org/sites/default/files/EE_Admin_Structures.pdf) (2008)

<sup>15</sup> Database of State Incentives for Renewables and Efficiency, *Vermont*, [http://www.dsireusa.org/incentives/incentive.cfm?Incentive\\_Code=VT08R&re=0&ee=1](http://www.dsireusa.org/incentives/incentive.cfm?Incentive_Code=VT08R&re=0&ee=1) (June 2012)

<sup>16</sup> Efficiency Vermont, *Frequently Asked Questions*, [http://www.encyvermont.com/about\\_us/information\\_reports/encyvermont\\_faqs.aspx](http://www.encyvermont.com/about_us/information_reports/encyvermont_faqs.aspx) (2012)

<sup>17</sup> Keith Hay, *Alternative Approaches to Administering DSM in Colorado*, [www.dora.state.co.us](http://www.dora.state.co.us) (October 2010).

<sup>18</sup> *U.S. States with Defined Electric Energy Efficiency Delivery Structure*, [www.raponline.org/document/download/id/834](http://www.raponline.org/document/download/id/834) (December 2009)

services, energy efficiency and renewable energy initiatives, and environmental research from the state's investor-owned utilities to state government. The legislation required the state Department of Administration to contract with Wisconsin-based non-profit firms to develop and implement programs.

The Public Service Commission of Wisconsin allowed each utility to retain some conservation dollars for "customer service conservation and load management" activities. Overall, 28 percent of the dollars were retained by utilities but percentages vary widely from one utility to another. Utilities can also promote Focus Wisconsin's energy efficiency initiative (Focus on Energy) funds using the monies that they have not yet transitioned to Focus. (There is a three-year period during which utilities are transitioning funding to Focus; this transition was intended to reduce service gaps between the old utility programs and the new Focus programs.)<sup>19</sup>

### California and its Utility-Run Efficiency Program

California runs its energy efficiency programs through its investor-owned utilities (IOUs) with substantial oversight and opportunity for public input while California's non-investor-owned utilities operate and fund their own efficiency programs. Each year the IOUs submit plans to the California Public Utilities Commission (CPUC) for consideration and approval. Once approved, the utilities contract out program delivery for a significant portion of their programs.<sup>20</sup> California's long-standing "decoupling" policy is designed to ensure that utilities retain their expected earnings even as energy efficiency programs reduce sales. California's energy use per capita has remained constant as the rest of the nation's usage has increased 50% as a result of this system.

### Illinois and its Hybrid Model

Illinois' two energy efficiency programs have operated in the past as hybrids of state agency and third-party programs. One of these programs, the Energy Efficiency Trust Fund works to fund energy efficiency projects through a grant system which pays third-party administrators to implement efficiency projects. The other program that the state controls uses a ratepayer surcharge to pay for efficiency projects that are administered by the state and the utilities. In Illinois, if a utility fails to meet its goals for three years, implementing authority for those goals get transferred to the state.

### Third-Party Efficiency Administrators: Drawing Parallels with Maryland

In the same way that Vermont had issues with its array of inconsistently administered efficiency programs, Maryland too has a problem. Currently in Maryland the utilities are charged with proposing and administering their own efficiency programs from separate funds overseen by Maryland's Public Service Commission. This ineffective model means that Maryland is only on

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<sup>19</sup> Wisconsin Department of Administration, *Transitioning from Utility to Third-Party Energy Efficiency Information Sources*, [http://eec.ucdavis.edu/ACEEE/2002/pdfs/panel05/15\\_533.pdf](http://eec.ucdavis.edu/ACEEE/2002/pdfs/panel05/15_533.pdf) (2002)

<sup>20</sup> Matthew Brown, *Models for Administering Ratepayer-Funded Energy Efficiency Programs*, [http://ase.org/sites/default/files/EE\\_Admin\\_Structures.pdf](http://ase.org/sites/default/files/EE_Admin_Structures.pdf) (2008)

track to reach an 8.4% per-capita reduction in energy consumption by 2015, well short of the state's goal of 15%.<sup>21</sup>

**If, after programmatic changes are made to EmPOWER Maryland, utilities continue to fall short of their increased savings goals, the state could contract a third-party efficiency utility to administer some of the state's energy efficiency programs.** This utility would be funded by a public benefits fund which in turn would be financed through EmPower surcharges collected on ratepayer bills and other funds deposited into the public benefits fund.

In addition to using revenues from ratepayer surcharges, Maryland could allocate more funds collected from the RGGI auctions to a public benefits fund. Currently Vermont invests 98% of its RGGI revenues to energy efficiency while Maryland only contributes 20% of those funds for efficiency.<sup>22</sup> Vermont's revenues from the RGGI auctions to date have only generated a little over \$7 million since its admission into RGGI. If Maryland had invested in energy efficiency at the same rate it would have been able to raise over \$16 million from just the two RGGI auctions this year.<sup>23</sup>

**The strength of a third- party utility model is the ability to focus its mission and eliminate conflicting business objectives, therefore achieving a high degree of compatibility with broader public policy goals.**<sup>24</sup> In addition, a single public benefits fund would simplify the current system by merging programs and unifying objectives. Evidence from Vermont shows that simplifying the process would also eliminate some overhead and administrative costs currently incurred by the PSC while providing more efficiency programs.

However, If Maryland relegates some efficiency programs to third-party administrators, it should be sure to avoid some of the problems that Oregon has encountered, namely creating a third-party administrator from scratch and not creating distinctions between said administrator's projects and those of the state or utility. Instead, **we would advise the state to contract to non-profits that already exist and have experience in energy efficiency.** It is also important to provide specific goals to the third-party that do not interfere with existing state or utility programs as a way to prevent conflict.

If Maryland does see the value in giving third-party efficiency administrators more projects, it will be useful to look at how Wisconsin was able to transition from its primarily utility-led efficiency initiative. **Wisconsin had a transition period of three years in which utilities were able to maintain at least some funding for their programs before transitioning completely to the third-**

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<sup>21</sup> MEA, *EmPower Planning for 2020*, (June 2012)

<sup>22</sup> RGGI Inc., *Investment of Proceeds from RGGI CO<sub>2</sub> Allowances*, [http://www.rggi.org/docs/Investment\\_of\\_RGGI\\_Allowance\\_Proceeds.pdf](http://www.rggi.org/docs/Investment_of_RGGI_Allowance_Proceeds.pdf) (February 2011)

<sup>23</sup> RGGI Inc., *Cumulative Allowances & Proceeds (by State)*, [http://www.rggi.org/market/co2\\_auctions/results](http://www.rggi.org/market/co2_auctions/results), (2012)

<sup>24</sup> Cheryl Harrington, *Who Should Deliver Ratepayer Funded Energy Efficiency?*, [www.raponline.org/document/download/id/129](http://www.raponline.org/document/download/id/129) (May 2003).

**party system of efficiency.** This reduced service gaps for customers still seeking programs the utility had traditionally been in charge of.

As mentioned later in these comments, the need for the PSC to broaden its cost-effectiveness test for greater savings will be necessary if Maryland hopes to meet its EmPower goals. California's Public Utilities Commission is a great example of how a state with ambitious goals can partner with investor-owned utilities and third parties to create noticeable changes in energy use.

We recommend that Maryland consider the lessons from these states' experiences with third parties, and evaluate the Illinois model, where if a utility fails to meet its goals for three years, implementing authority for those goals get transferred to the state. Such action has precedence in Maryland, as the PSC transferred utility authority for low-income energy efficiency programs to the Department of Housing and Community Development<sup>xvi</sup>. If, after the EmPOWER program is reformed, utilities continue to fall short of state goals, PSC should consider transferring their goals either to the state or to a third-party efficiency utility.

A final word of caution on the third party model is that if it is adopted either voluntarily by the utility or as a penalty for continued non-compliance, **efforts should be made to avoid a mixed program model where multiple actors operate in the same jurisdiction.** Other states have experienced multiple actors clashing over who can save the savings, which is not an experience that we would like to replicate in Maryland. Also, **if a third party is to be successful, it will need to access customer data from the utility that operates in that jurisdiction.** As this is likely to be controversial, this issue should be settled before any third party models are implemented.

### **Broaden Cost-Effectiveness Test**

**To date, the PSC has approved programs far below the level necessary for utilities to meet their electricity savings goals. In a 2011 report by the Maryland Public Interest Research Group (PIRG), much of the blame for utilities failing to meet their goals was placed on the PSC for failing to approve programs sufficient to meet their goals. They go on to say that “the PSC has very narrow and inconsistent criteria for program approval, and as a result, utilities are limited in the kinds of efficiency measures they design and pursue.”**

**PSC self-admittedly maintains a very narrow definition of “cost-effective.”** In a letter from the PSC to BGE dated August 18, 2008<sup>25</sup>, they suggest that the authorizing EmPOWER legislation intentionally left the term “cost-effective” undefined in order to allow the Commission to “use its best judgment, to be good stewards of ratepayer funds, and to ensure that any programs it approves achieve a direct and appropriate return for the ratepayers’ investment.” **They conclude by saying that the PSC “does not consider itself bound to follow or accept any particular calculation of cost-effectiveness,” because “the EmPOWER Maryland Act does not incorporate or refer to any definition, from California or elsewhere.”**

**Based on PSC’s own analysis of their authority to approve or deny programs, we believe that PSC has the authority and that they should expand their definition of “cost-effective” in order to approve programs sufficient to meet the EmPOWER’s savings goals. We commend the PSC**

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<sup>25</sup> Commission Letter Order to BGE, August 18, 2008, Maillog # 108061, pp. 4-6.

for acknowledging this in their December 2011 Order 84569<sup>26</sup> through their decision that cost-effectiveness shall be examined on a “sub-portfolio” level, i.e. collectively for residential programs and collectively for Commercial and Industrial programs. This decision recognizes that new innovations may not always satisfy cost-effectiveness standards on a program-by-program basis, and an innovative proposed program may not meet the immediate first-year cost-effectiveness threshold.

In the same Order though, the PSC declined to approve any further expansion of its cost-effectiveness standard. However, **they stated that they were willing to re-evaluate the scope and balance of the factors bearing on cost-effectiveness. We encourage the Commission to expand its definition of benefits in its test of Total Resource Cost. This expansion should include avoided costs of building new power plants and transmission lines, public health benefits, and climate benefits.**

In the latter case, because of Maryland’s aggressive greenhouse gas (GHG) reduction and renewable energy goals, we recommend that the PSC consider: (1) a program’s ability to help meet Maryland's GHG reduction goals under the Greenhouse Gas Emissions Reduction Act (GGRA); (2) the avoided costs of purchasing CO<sub>2</sub> emissions permits under the Regional Greenhouse Gas Initiative (RGGI); and (3) the avoided costs of purchasing renewable energy credits under the Renewable Portfolio Standard (RPS), as a result of each proposed efficiency program.

**Ultimately, an all cost-effective approach to energy efficiency will only be effective if the PSC has a sufficiently inclusive definition of cost-effective that allows programs to be approved that are sufficient to meet our goals.** This definition should consider such factors as the lifetime energy savings from proposed programs, the levelized costs of programs versus the next cheapest source of electricity supply, and a program’s ability to achieve the state’s other energy and climate goals.

For an expanded list of costs and benefits that PSC could consider for their Total Resource Cost test, we invite them to consult the California Standard Practice Manual when making decisions about programs.

## **On-Bill Financing**

One novel way that some other states have encouraged ratepayers to take advantage of energy efficiency and conservation programs is through On-Bill Financing (OBF). That is a system whereby utilities extend loans to ratepayers to make efficiency upgrades, which are then repaid through energy savings on the utility bill. Ratepayers who take advantage of OBF see no increase in their bill payments over the life of the investment because loan repayments do not exceed the monthly energy savings. The advantages of this system are that OBF has historically low default rates, it creates a revolving fund that refinances itself, it can be extended to previously underserved markets such as rental and multifamily buildings, and it can also be accessed by traditionally credit-

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<sup>26</sup> Maryland Public Service Commission. *Order 84569*. Rep. N.p.: n.p., n.d. 22 Dec. 2011

constrained customers to gain access to financing through modified underwriting that takes bill payment history into account<sup>27</sup>.

Barriers to OBF include upfront costs to utilities that need to modify their billing systems, a perception that utilities must function as a financial institution to participate in on-going financing, risks of non-payment of the finance charge, handling the transfer of property, finding capital, and addressing non-utility fuels. In order to overcome these barriers, PSC and utilities should consider through the use of a public benefits fund and the expertise of a 3<sup>rd</sup> parties. Using an adequately funded PBF to extend low to no-interest loans to ratepayers that are collected through utility bills with the assistance of 3<sup>rd</sup> party financial experts could help overcome the funding challenges and utility resistance to acting as a financial institution.

PSC Order 84569 ordered utilities and other parties to convene a work group for the purpose of analyzing financing opportunities in greater detail, as well as legislative or regulatory solutions that might overcome barriers to financing programs. OBF was specifically mentioned in that order as an idea to consider. **We recommend that utilities adopt OBF, and explore a 3<sup>rd</sup> party option to administer the loans, as a way to encourage ratepayers to take advantage of EmPOWER programs.**

**Thank you very much for allowing us to comment on this important program. We look forward to engaging with MEA as it finalizes its report to the Legislature.**

***For more information, please contact James McGarry, Policy Analyst and Communications Associate at CCAN: ([james@chesapeakeclimate.org](mailto:james@chesapeakeclimate.org))***

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<sup>27</sup> Bell, Catherine J., Steven Nadel, and Sara Hayes. *On-Bill Financing for Energy Efficiency Improvements: A Review of Current Program Challenges, Opportunities, and Best Practices*. Rep. no. E118. Washington, D.C.: American Council for an Energy-Efficient Economy, 2011.