September 29, 2011

Terry J. Romine, Executive Secretary
Public Service Commission of Maryland
William Donald Schaefer Tower
Baltimore, MD 21202-6806

Re: Case No. 9153, 9154, 9155, 9156 and 9157
EmPOWER Maryland Plans for 2012-2014

Dear Secretary Romine,

On behalf of Northeast Energy Efficiency Partnerships (NEEP),[1] thank you for the opportunity to provide comments on the EmPOWER Maryland Plans for 2012-2014. Our comments will touch upon points made in the recommendations by the Maryland Energy Administration (MEA) dated September 1, 2011 and on elements of the individual utility company filings as well as provide general guidance for the next phase of EmPOWER. Please note that these comments are in addition to joint comments submitted by coalition of energy efficiency advocacy organizations that included NEEP, the Alliance to Save Energy and the Institute for Market Transformation, and which focused primarily on the role the state's utilities could play in advancing building energy codes. While NEEP's comments represented here also touch on building energy codes, we additionally delve further into a number of other issues raised in the recommendations and program filings.

The development and implementation of the first three year plans under EmPOWER Maryland has been a major undertaking. The state and utility partners have made notable progress and delivered benefits to thousands of residential and commercial customers. While electric utility program administrators as a whole are not yet on pace to deliver on yearly targets, the state as a whole should be commended for its efficiency efforts. Maryland remains a leader in the Mid-Atlantic region in its commitment to make energy efficiency a first-order resource.

Currently, Maryland's utilities have achieved only 23 percent of their 2011 EmPOWER Maryland goals (about 10 percent of their 2015 goals). MEA analysis shows that the utilities would have to achieve 1.8 percent annual electric savings each year through 2015 to meet their original 2015 target, far above the 0.6 percent annual savings they are achieving to

[1] These comments are offered by NEEP staff and do not necessarily represent the view of NEEP's Board of Directors, sponsors or underwriters.

date.[2] This is an extremely ambitious target, with only one state, Vermont, consistently achieving over 1.5 percent annual energy savings.

It is very clear that the level of investment in energy efficiency must rise. Utilities are currently spending about $14 per capita on energy efficiency programs, far below the level of states that are achieving significant energy savings. States with similar goals to Maryland, like Connecticut, Massachusetts and Vermont, are spending between $30-60 per capita (see table below for comparison). NEEP would urge the Commission to require that utilities ramp up their annual efficiency expenditures to better align with their energy savings goals.

New England Region: **2009-2011**
Electric Per Capita Funding ($mm)

	2009	2010	2011
CT	$33.6	$45.0	$38.8
ME	$16.7	$ 19.0	$18.0
MA	$36.4	$ 36.3	$65.4
NH	$26.4	$25.5	$14.6
RI	$30.1	$25.1	$43.3
VT	$41.8	$56.9	$67.2

Regulators are understandably concerned about the impact that such investments might have on utility rates. However, analysis done by the Massachusetts Department of Public Utilities and utility companies[3] shows that strong investment in energy efficiency will reduce energy costs over time for participants and non-participants alike. Energy efficiency is one of the strongest tools the PSC has for helping Marylanders control and reduce their energy costs.

As is outlined in the MEA's White Paper, many of the programs did not ramp up as quickly as would have been hoped. This was a result of a number of factors that differ among utility companies, and is most pronounced with the companies that may have less experience in administering programs and perhaps the least corporate leadership to integrate efficiency as a key business strategy. From NEEP's vantage point, a slow and somewhat contentious regulatory process has further hampered progress. However we are glad to hear that on evaluation issues at least, there has been an increasingly collaborative and constructive environment between the program administrators and the Commission.

[2] MEA Whitepaper: http://webapp.psc.state.md.us/Intranet/maillog/submit.cfm?MaillogPath=133962&maillogNum=133962, pages 1-2
[3] One presentation on the so-called "DRIPE effect" is at: http://www.ma-eeac.org/docs/090714-BillImpactRes.pdf

We believe one of the biggest impediments to success in Maryland is the absence of a statewide structure of program delivery that is aligned with policy goals. Without true statewide coordination with clearly-defined roles and responsibilities, program administrators and regulators will continue to clash rather than cooperate, customers will continue to be confused, ratepayer dollars will not be optimized, and the state will achieve lower energy savings than is ultimately possible.

It is our experience working in states across the region that programs function best when there are clear rules of the game and regulators oversee programs at a high level to ensure coordination and best use of efficiency funds. Maryland is a state with distinctly different regional markets. The complexity of program administration and the variety of energy efficiency program administrators (PAs) — including the Energy Administration and the five electric utilities — makes navigation difficult for all parties involved, and for customers, vendors and building professionals, in particular.

The sheer volume of program plan filings, some over 800 pages, is testament alone to how unwieldy the programs are. Clearly, an enormous amount of work has gone into designing programs and preparing program plans at each of the five electric companies, and each plan outlines sensible-sounding programs that build on past success and draw from the experiences of PAs in Maryland and other parts of the country. But to have so many similar yet slightly different programs must be extremely challenging for state regulators as well as potential customers and delivery partners to comprehend and navigate. Joint coordination and aligned incentives and marketing would be one of the greatest boons to program success and customer participation.

Overarching Recommendations

In response to MEA's White Paper and in terms of general guidance based on our experience in efficiency policies and program delivery across the region, we believe the following elements are among the most critical for Maryland to address:

1. Allowing for greater flexibility and implement a clear and expedient process to amend, introduce and/or cancel efficiency program offerings mid-term, as needed;
2. Creating a performance-based utility incentive framework that provides a way for shareholders to earn a fair return on their investment in energy efficiency from investing in cost-effective efficiency;
3. Addressing some fundamental shortcomings of the current approach to cost-effectiveness tests for programs;
4. Leveraging regional market-based efforts and learning from the experience of neighboring states;
5. Emphasizing the role that utilities can play in furthering complementary policies such as building energy codes and appliance efficiency standards; and

6. Ensuring that market barriers are addressed so that it is as easy as possible for customers to access energy efficiency resources and implement efficiency measures.

I. Regulatory Issues

With ambitious EmPOWER goals and utility plans that seek broader and deeper savings, the ability to meet those goals depends greatly on energy efficiency program administrators operating in a manner that allows them to be flexible and responsive to changing circumstances—as well as the freedom to employ new, creative and innovative methods to attain those savings. Resolving or improving processes and relationships at the regulatory level is key to advancing effective efficiency program administration at the utility level. Following are three major recommendations on regulatory issues:

Further Improve Program Delivery Options and Flexibility - We are pleased to see the utility plans offer a variety of programs and delivery mechanisms, as well as the understanding that different channels and strategies are needed to reach different markets and customer segments. While oversight and coordination are necessary, we believe that regulators should focus on the *what* and not on the *how* of efficiency goals. Program administrators should be able to move some funds between program budgets and be able to propose and have quickly reviewed and approved any mid-term program modifications. Once program administrators have demonstrated core competency at running programs and delivering savings, they should be permitted to make such changes with fewer regulatory hoops. Regulators should provide flexibility in program offerings and budgets that afford PAs leeway in how they achieve savings and work with multi-year budgets and goals, keeping in mind the importance of parity among rate classes. While administrative oversight by PSC staff is vital to ensure the wise use of ratepayer dollars, as this initiative matures, the PAs' hands must be untied and allowed to move forward at the pace necessary to achieve targets.

To that end, we would like to see the PSC clearly lay out a format for how they would like to receive submissions for new or adjusted programs. This should include guidelines and reasonable timeframes so that expectations are understood from all sides, and decisions around approval are expedient. Vermont and Massachusetts are two states that have relatively flexible and expedient processes for program administrators to respond nimbly to changing market conditions and program uptake while providing continuity for customers, and we encourage Staff to consider whether such procedures might be appropriate for Maryland as well. In addition, we would support longer planning horizons, as well as the ability to roll funds as needed (within reason) among programs, between years.

Specify Cost Effectiveness Tests - The Public Service Commission (PSC) has not clearly delineated a consistent tool for determining cost effectiveness of efficiency programs, and this is a major policy problem that in turn hinders program administration. The Total Resource Cost (TRC) test is one tool used in a number of states in various forms. A cost-effective portfolio of programs, as determined by a well-designed and correctly utilized TRC, helps meet the overarching objective of providing customers with reliable energy services at the lowest total cost. Yet because states have policy mandates for programs to achieve ambitious energy savings targets, as well as broader public policy goals of cleaner air, reduced emissions, improved health and even job creation, it is important for regulators to be open to adjusting the TRC to more comprehensively reflect benefits of efficiency programs from a societal perspective.

We agree with the recommendations of MEA that programs should be evaluated not just at measure level, but at the portfolio level. And as the Commission knows, it is not as simple as just adopting the TRC — the fact is that it is administered slightly differently just about everywhere it is used. States around the region and the nation are now grappling with ways to evolve this tool to be adaptive to the changing times, times in which goals are bigger, programs seek to go broader and deeper, and there are numerous non-electric benefits that states are taking into consideration.

We strongly encourage the PSC to continue its study of the various options for determining cost effectiveness. Contrary to the proposal of the MEA to focus on a test that is easily understandable by all parties (so-called "Mrs. Jones."), we would assert that the primary importance is that criteria developed should align with the state's policy goals.

Resolving cost-effectiveness is not an issue to be dealt with at a later date, but rather a fundamental shortcoming of existing Staff operations that is long overdue for a comprehensive analysis, discussion, and potential overhaul to ensure Maryland is using the best methodology possible to approve efficiency programs and achieve its savings goals.

We believe the Commission should follow the lead of states that have included a societal test to capture benefits of energy efficiency that more fully account for the avoided costs of building transmission lines and power plants, as well as the public health and climate benefits of using less energy. Traditional cost-benefit tests also do not quantify many of the positive impacts of innovative program offerings — things like behavioral programs, deep retrofits, and technology demonstrations for emerging products. The fact that some programs take longer to bear fruit or are harder to measure does not mean that they are not important investments – now and for the future.

Carefully Devise Incentives and Penalties - The implementation of a clear and effective utility incentive structure helps to ensure that utilities assign the requisite corporate management attention and programmatic and fiscal resources to utility efficiency programs, which are an essential component of achieving the state's 15 by 15 goal.

An effective shareholder incentive structure can help level the playing field between energy efficiency and supply side resources and maintain the utilities' sustained commitment to energy efficiency over time. The award of incentives should be based on actual performance with respect to a utility's energy efficiency program portfolio (not each specific program), subject to independent verification. In addition, incentives should be scaled, with higher incentives for higher achievement, and the opportunity to earn greater incentives for exemplary performance beyond the base target, so as to maintain the utilities' incentive to pursue cost-effective efficiency beyond the targeted level. Incentives should create a win-win opportunity for customers and shareholders. We encourage the PSC to look at states such as Massachusetts, Rhode Island and Connecticut when determining how to set shareholder incentives.

Though we think it is also valuable for penalties be included for poor performance on utilities' savings goals, given the many extenuating factors that affected program roll-out, we caution the Commission to go slowly. Launching these new programs was a major undertaking, with several of the utilities facing a steep curve to staff up and to begin offering efficiency solutions to customers. Without other regulatory changes including increased flexibility, development of a cost-effectiveness test and a transparent and expeditious process for the utilities to make mid-term program modifications as needed, penalties could have a dangerous chilling effect on the shared goals of the state.

Maryland also has an important policy tool in revenue decoupling, which can help utilities separate profits from volumetric sales. Leveraging this tool that removes the disincentive for utilities to help customers use less energy, together with incentive for companies to maintain profits by delivering excellence in performance, can help align the interests of energy delivery companies, ratepayers and the greater public good.

II. Improve Synchronization and Collaboration

NEEP respectfully submits the following recommendations on ways that the state and the program administrators can improve upon overall program delivery and accelerate energy savings to best meet the state's savings goals:

- **Look to increase coordination**. While we appreciate that the utilities do meet and share insights on program administration, we believe that a great deal of progress remains in this regard. Lessons from other states teach us that coordinated programs with a single brand are more effective than separate efforts. This is true from a customer point of view, and also in terms of reducing overhead and maximizing ratepayer dollars. When each utility offers even slightly different programs, it complicates energy efficiency outreach, education and training for consumers and contractors. True statewide coordination among the utilities in how they plan, market, deliver and evaluate their programs could improve clarity and consistency while allowing the utility administrators to maintain their position as the customer touch point.

- **Take a whole-building approach**. Increased coordination also includes holistic programs that integrate electric and thermal efficiency and encourage PAs to take a systems approach to energy savings. While the natural gas companies are not required to implement efficiency programs until 2015, some leading companies such as Baltimore Gas & Electric are already offering integrated programs. As more natural gas delivery companies begin offering efficiency programs, it will be of tremendous benefit to customers and overall program administration to coordinate marketing and delivery with electric programs.

- **Create a stakeholder efficiency advisory board**. Aside from coordination among the PAs, NEEP again encourages Maryland to do what some of the most successful states have done, by creating a standing stakeholder advisory board. The Public Service Commission should authorize the Maryland Energy Administration to convene a permanent energy efficiency advisory board made up of business interests, utility representatives, consumer and environmental advocates, low income interests, energy efficiency experts and implementers. This group should be charged with advising the PSC on efficiency program development and implementation, and can help ensure that various interests are met while ultimately serving as a unifying force to support successful and well-run programs.[4]

- **Leverage regional approaches to aid Maryland programs.** When resources are pooled, states and program administrators can accomplish much more than any of them could on their own. This is true in terms of joint studies such as market evaluations, upstream market work with wholesalers and retailers who prefer engaging regionally rather than in a fragmented manner, and the transfer of knowledge and best practices among program administrators, state energy offices and regulators alike. Maryland has both benefited from and contributed to several projects facilitated by the Regional Evaluation, Measurement and Verification (EM&V) Forum hosted by NEEP. But there is much more the state could be taking advantage of, with current projects including a Regional Lighting Strategy, commercial solid state lighting, advanced power strips and consumer electronics.

[4] Examples and recommendations are on page 34 of NEEP's report, *From Potential to Action*, http://neep.org/public-policy/policy-outreach-and-analysis/potential-study

III. Complementary Public Policies

Together with a flexible regulatory environment, we encourage Maryland to pursue and support public policies that leverage ratepayer-funded programs to achieve even greater energy savings. These policy tools include building energy codes, energy performance rating and disclosure for both new and existing buildings, and appliance efficiency standards. Complementary policies such as these are critical tools being used by many states to lock in energy savings as technology advances. Indeed, there have been many champions of such policies in the Maryland state assembly and the Maryland Energy Administration.

In addition, there are important roles for utility program administrators to play as well. While it sometimes occurs that utilities may consider such policies as a threat that could alter baselines and undercut some of the more cost-effective EmPOWER programs, Maryland can learn from states that are actively engaging utility companies in areas such as state and federal advocacy or training initiatives. NEEP believes it is valuable to have customer-facing program administrators involved in and able to share credit for their work to advance such complementary policies. This is true especially in light of the fact that continually advancing codes and standards is part of the push to raise the bar, and the efforts and interests of PAs should be aligned with these larger public policy benefits.

With scant mention of codes and standards as the domain of PAs in any of the EmPOWER filings, we see a real missed opportunity in not engaging the utilities to a greater extent. Ultimately, they are the ones who have direct interaction with the customers they serve, as well as being involved with the gamut of building professionals and trades that are a crucial component of efficiency implementation.

Specifically, we recommend that the Commission require the utilities to include activities to advance and implement building energy code and appliance efficiency standards into their program plans, and that the Commission and MEA work with them to develop methods for program administrators to measure and claim the energy reductions that result from their work in advancing codes and standards (through education, training, testing, etc.) and attribute them to savings targets. NEEP and a number of other stakeholders have done a great deal of work in this area and would be more than happy to work with Commission and utility staff on such an effort.

IV. The value of working regionally

The Northeast United States — including New England, New York and the Mid-Atlantic States — are the midst of an historic ramp-up of efficiency programs and policies to acquire cost-effective energy efficiency. To meet these commitments, gas and electric energy efficiency program administrators need new strategies, programs, and technologies. States are also pursuing new policy goals in the areas of building energy codes, appliance efficiency standards, building energy rating, greenhouse gas reductions, and a host of other energy and environmental policies. Strategic alignment of these efforts with ratepayer-funded efficiency programs is needed to help these programs realize their maximum potential at minimum cost to ratepayers. For 15 years, NEEP has worked to help individual utilities and other program administrators to stay connected, aware and informed of new developments across the region and at the federal level. NEEP also offers these participants multiple opportunities to build on each other's strengths — increasing the market reach and impact of individual and state efficiency programs and policies.

Support for and participation in NEEP help enhance strategic regional collaboration to achieve measurable results quickly and cost-effectively by:

- Leveraging industry, federal and regional resources to plan, implement and evaluate efficiency and demand-side resource programs and policies;
- Facilitating consistency in standards, requirements and messages that lead to rapid market adoption of energy-efficient products and practices;
- Identifying opportunities for strategic coordination in programs and policies to yield greater results;
- Aligning their efforts with other relevant regional and national efforts to advance energy efficiency;
- Aggregating their common programs across the region to work upstream in markets and influence decisions by retailers, manufacturers, distributors and other actors to provide greater market access to their respective programs;
- Making more visible their program and policy successes; and
- Facilitating relationships and communications among the region's energy-efficiency leaders to transfer knowledge, share best practices, address issues of common concern and build overall momentum for successful programs and policies.

We encourage the Public Service Commission and the program administrators to consider the benefits of such regional collaboration, and are available to answer any questions on the matter of greater involvement with NEEP.

V. Conclusion

Maryland has made notable progress with its efficiency programs, but if there is not sufficient funding, coordination and collaboration, the state could fall even further behind the ambitious goals of the EmPOWER Act. We commend the MEA for compiling the White Paper at this critical juncture to inform the Commission's recommendations going forward. Maryland's progress on energy efficiency issues can only be maintained with an unwavering commitment to well-implemented programs. The utility programs established through the EmPOWER Act are a cornerstone of the state's energy, environmental, and economic policy. Despite a slow start, Maryland is poised to make significant progress on the EmPOWER goals— if PSC Staff and the Commission are open to making the necessary improvements to program implementation. We urge Staff to keep an open mind on all aspects of the programs and seriously consider more significant changes to current operating procedures.

Thank you for this opportunity to comment, and we look forward to working with Staff, the Commission and the program administrators to ensure Maryland continues reaping the benefits of cost-effective energy efficiency.

Sincerely,

Natalie Hildt

Natalie Hildt
Manager of Public Policy Outreach
Northeast Energy Efficiency Partnerships

NEEP is a regional nonprofit that promotes the efficient use of energy in homes, buildings and industry in the Northeast. We advance cutting-edge products and practices through coordinated, whole-building efficiency programs and policies. Saving energy creates a stronger economy, a cleaner environment and a more reliable and affordable energy system.