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ORDER NO. 88631

IN THE MATTER OF THE MERGER OF ALTAGAS LTD. AND WGL HOLDINGS, INC.	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND
		CASE NO. 9449

Issue Date: April 4, 2018

Before: W. Kevin Hughes, Chairman
Michael T. Richard, Commissioner
Anthony J. O'Donnell, Commissioner
Odogwu Obi Linton, Commissioner
Mindy L. Herman, Commissioner

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I. INTRODUCTION[1]

On April 24, 2017, pursuant to § 6-105 of the Public Utilities Article (“PUA”), *Annotated Code of Maryland*, AltaGas Ltd. (“AltaGas”), WGL Holdings, Inc. (“WGL”), and Washington Gas Light Company (“Washington Gas”) (collectively, “the Joint Applicants”) filed with the Public Service Commission (“Commission”), an application requesting authorization for AltaGas to acquire the power to exercise substantial influence over the policies and actions of Washington Gas (“Application”), a natural gas distribution company operating in Maryland, and a wholly-owned subsidiary of WGL.

The Application went through the normal procedural course, including, direct, rebuttal, surrebuttal and rejoinder testimony, extensive evidentiary hearings, and initial and reply briefs. Both at the evidentiary hearings and in their post-hearing briefs, the Joint Applicants added to and modified their proposed commitments in response to the testimony of other party witnesses. Shortly before the statutory deadline by which we were to have issued our decision on the matter, a partial settlement was reached (hereinafter, “the Settlement Agreement”). The Settlement Agreement between the Joint Applicants, the Maryland Energy Administration (“MEA”), Prince George’s County, Maryland (“Prince George’s County”), Montgomery County, Maryland “(Montgomery County”), and Baltimore Washington Laborers and Public Employees District Council (“BWLDC”), an affiliate of the Laborers International Union of North America (“LiUNA”) (hereinafter, “BWLDC/LiUNA”), modified the substance of the transaction once again.

PUA § 6-105 tasks the Commission with determining whether the proposed merger is “consistent with the public interest, convenience, and necessity, including

[1] Chairman W. Kevin Hughes dissents from this Order and writes separately.

benefits and no harm to consumers." The Application as it stood prior to the settlement raised serious concerns: the direct benefits to consumers, although present, were meager; sufficient mitigation of the potential for harm to consumers was not in place; and aspects of the transaction that could have been viewed as being consistent with the public interest were not presented in sufficient detail. The mere filing of the Settlement, however, did not resolve this matter, regardless of the fact that the Settlement is partial rather than unanimous. We are still tasked with reviewing the terms of the Agreement independently for compliance with PUA § 6-105, and we do not take this task lightly. If the merger as proposed is approved by all jurisdictions, AltaGas will become the parent of Washington Gas, as well as several other WGL subsidiaries. Evidence presented on the Joint Applicants' respective stock prices, return on equity, and dividend payout ratio, among other things, was carefully considered, given the undeniable importance and value that Washington Gas holds within the State of Maryland.[2] As with other mergers, needless to say, our analysis of the proposed transaction in this case has been carefully conducted.

We find it important to note, again, that our responsibility in the instant matter, while not simple, is solely to review the proposed transaction for compliance with the statutory requirements developed by the Legislature. Our job is not to question or value the motivations of the Joint Applicants or other Settling Parties, nor to determine whether or not AltaGas is the best parent company for Washington Gas among *hypothetical*

[2] Several times throughout this proceeding, Washington Gas was referred to as a "homegrown utility," and for good reason. It was chartered by Congress in 1848 and began providing gas service before the invention of telephones or automobiles, or the residential use of electricity. Washington Gas's operations grew over the years, both through acquisitions and service area expansions. In 2000, with the growth of deregulated energy markets, WGL was formed to facilitate greater involvement in non-regulated business activities. With its stable income stream and established operations, Washington Gas provided balance as the holding company began to grow the non-utility segments of its energy business. Today, WGL has strong credit ratings and earnings prospects, and Washington Gas remains its largest asset and most substantial source of earnings. B. Oliver Direct at 10 and 11.

alternatives. Instead, our task is to assess the merger request pursuant to the PUA and our controlling regulations. We welcome and carefully consider the viewpoints of the Joint Applicants, of our State Energy Administration to pursue energy policy in Maryland's best interest, of our Counties to advocate strenuously on behalf of their residents, and of all parties to this matter to effectively represent their needs and abilities. We, in turn, focus on the duty that we have been charged with and the decision-making authority that has been entrusted to us.

Turning our attention to the substance of the pending proposal, we note that – as compared with the Joint Applicant's initial filing – the Settlement Agreement presents us with a significantly improved transaction to consider. It is clear to us that the Joint Applicants heard the needs and concerns expressed by the parties, and that they put considerable time and effort into addressing those needs and concerns in a fair and balanced way. The commitments that were modified and added as part of the Settlement Agreement show an increase in the direct and tangible benefits to customers, enhanced mitigation measures to protect Washington Gas and its customers from harm that could stem from a larger, more diverse future parent company, and a pledge toward innovative programs that will serve the broader public interest.

We do, however, note the absence of several terms and conditions that we consider to be essential. The proposed Settlement is silent on the treatment of existing supplier contracts and requirements, on customer needs pertaining to safety and customer service, and on the increasingly important issue of cybersecurity. Furthermore, while the Application and Settlement Agreement make reference to "pre-Merger" and "post-Merger" for purposes of shared-services cost comparison, neither clearly identify where the line is drawn between the two. While these are matters of importance, they, as well as other missing pieces, can be addressed through the inclusion of additional conditions and therefore do not require that the entire transaction be rejected.

We have analyzed the Application, as modified by the Joint Applicants' testimony, briefs, and Settlement Agreement, against the governing law of PUA § 6-105 and the full record developed in this case. While most of the proposed Settlement conditions lend to the satisfaction of PUA § 6-105, we have, as stated, made changes where necessary to fulfill applicable statutory requirements. In sum, we approve the Merger subject to revised conditions, including but not limited to those summarized below, and all of which we detail at the end of this Order.

(1) Restoration of the $8.8 million one-time rate credit to Washington Gas non-residential customers, with allocations to Montgomery County, Prince George's County, and MEA decreased commensurately, to maintain the balance of the Settlement Agreement;[3]

(2) Addition of a commitment on cybersecurity mirroring that included in the Application pending before the District of Columbia Public Service Commission;

(3) Designation of calendar year 2016 as the "pre-Merger" reference point for pre- and post-Merger comparisons;

(4) Appointment of a company-wide team tasked with ensuring that both supplier and workforce diversity are fundamental parts of the merged company;

(5) Clarification that the Commission is not creating any special expectation to include AltaGas as an entity covered by the North American Free Trade Agreement to close the Merger;

(6) Clarifications that the Commission, by approving the merger, is not pre-approving any natural gas expansion project nor waiving an subsequent prudency review;

(7) Strengthening of certain ring fencing provisions, including related to Washington Gas's equity ratio;

[3] *See* Tr. at 2737-38 and 3059.

(8) Development of a $4 million program to implement measurable safety measures in Washington Gas's Maryland service territory; and

(9) Notification to all Maryland residential and small business customers currently receiving deregulated electric commodity of the change in control of WGES and it will honor all existing contracts.

We recognize that, by deviating from the terms of the Settlement Agreement, the Joint Applicants have reserved the right to reject this merger rather than proceed to closing. In our efforts to revise the Settlement, we have attempted to closely align our changes to the overall commitment proposed by AltaGas to the citizens of Maryland and the customers of Washington Gas. We therefore direct the Joint Applicants to advise us in writing of their intentions no later than April 16, 2018.

II. BACKGROUND

A. The Joint Applicants

AltaGas is a North American diversified energy infrastructure business with regulated operations in Canada, Michigan and Alaska, and unregulated operations in Canada and the United States. It was founded in 1994 when AltaGas Services, Inc. began operations in Calgary, Alberta with 21 employees. Today, AltaGas employs more than 1,600 people and maintains its headquarters in Calgary.[4]

AltaGas is focused on three business segments: utilities, gas, and power. Under the utilities segment, AltaGas serves approximately 570,000 customers through its ownership of five local natural gas distribution companies ("LDCs"), which are SEMCO Energy Gas Company ("SEMCO") in Michigan; ENSTAR Natural Gas Company ("ENSTAR") in Alaska; AltaGas Utilities Inc. in Alberta; Pacific Northern Gas Ltd. in

[4] Application at 3.

British Columbia; and Heritage Gas Limited in Nova Scotia. AltaGas also owns 65% of Cook Inlet Natural Gas Storage Alaska, LLC ("CINGSA"), a regulated natural gas storage utility in Alaska.[5]

The gas portion of AltaGas's business serves customers primarily in the Western Canadian Sedimentary Basin and transacts more than 2 billion cubic feet per day of natural gas, including natural gas gathering and processing, natural gas liquids extraction and separation, transmission, storage and natural gas marketing. AltaGas also has an equity investment in an integrated midstream company providing infrastructure, supply logistics, and marketing expertise.[6]

AltaGas's power interests include electric generation assets located across North America with approximately 1,700 megawatts ("MW") of capacity from four fuel types: hydro, gas-fired, wind, and biomass, as well as 20 MW of battery energy storage.[7]

WGL is a diversified utility holding company incorporated in Virginia and headquartered in Washington, D.C. that was established in the year 2000 and is the parent holding company for Washington Gas, Hampshire Gas Company ("Hampshire Gas"), and Washington Gas Resources Corporation. WGL currently employs more than 1,500 people.[8]

Washington Gas has been engaged in the natural gas distribution business since 1848, and currently provides regulated gas distribution services to approximately 1.1 million customers across its three jurisdictions: Maryland (approximately 473,000 customers, or 41% of its customer base), the District of Columbia (approximately

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[5] *Id.* at 3-4.
[6] *Id.* at 4.
[7] *Id.*
[8] *Id.*

158,000 customers, or 14% of its customer base), and Virginia (approximately 520,000 customers, or 45% of its customer base).[9]

Hampshire Gas is regulated by the Federal Energy Regulatory Commission and owns and operates interests in natural gas storage facilities in and around Hampshire County, West Virginia.[10] Washington Gas purchases all of the storage service of Hampshire Gas, and includes the cost of the services in its regulated energy bills to customers.[11]

Washington Gas Resources Corporation owns four unregulated subsidiaries: WGL Energy Services, Inc., WGL Energy Systems, Inc., WGSW, Inc., and WGL Midstream, Inc. WGL Energy Services, Inc. is WGL's retail energy marketing segment, which sells natural gas, electricity, wind/renewable energy credits and carbon offsets directly to residential, commercial, and industrial customers in Maryland, Virginia, Delaware, Pennsylvania, and the District of Columbia. WGL Energy Systems, Inc. and WGSW, Inc. are WGL's commercial energy systems segment, which focuses on clean and energy efficient solutions for its customers and delivers a full suite of energy offerings including natural gas, electricity, green power, carbon reduction, distributed generation, and energy efficiency.[12] WGL Midstream, Inc. specializes in the investment, management, development, and optimization of natural gas storage and transportation midstream infrastructure projects.[13]

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[9] *Id.* at 5.
[10] *Id.*
[11] Arndt Direct at 25.
[12] *Id.*
[13] *Id.*

B. The Merger Agreement and Commitments

AltaGas proposes to acquire WGL in an all-cash transaction for approximately $4.5 billion. Upon consummation of the transaction, each WGL shareholder will be entitled to receive $88.25 in cash for each outstanding share of WGL common stock.[14] Subsequently, WGL stock will no longer be publicly traded and fewer corporate functions associated with maintaining public issuer status (e.g., investor relations) will be performed by WGL.[15]

At merger closing, WGL will merge with Wrangler Inc. ("Merger Sub"),[16] with WGL continuing as the surviving corporation and indirect subsidiary of AltaGas. In addition to the entities owned by WGL prior to the merger, post-merger WGL will also directly own 100% of the special purpose entity, SPE HoldCo, LLC ("SPE").[17] The SPE is a limited liability entity organized under the laws of Delaware. It will directly own 100% of Washington Gas, and was specially created to provide sufficient ring fencing to protect Washington Gas from financial difficulties that may be incurred by its parent companies. The SPE will have a board of directors consisting of three members, of whom one will be an independent director who will be an employee of an administration company in the business of protecting special purpose entities. Additionally, it will issue a "golden share" to an administration company in the business of protecting special

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[14] Application at 6.
[15] *Id.*
[16] Merger Sub is a Virginia corporation and wholly-owned indirect subsidiary of AltaGas that was formed for the sole purpose of effectuating the proposed merger. At merger closing, Merger Sub will cease to exist as a separate legal entity. *Id.*
[17] *Id.* at 8.

purpose entities.[18] This independent director on the board of the SPE will not serve on a board of directors above the ring-fenced entities.[19]

WGL and Washington Gas will continue to maintain headquarters in the District of Columbia and the existing operational management structure of Washington Gas will remain substantially the same. Washington Gas will remain a standalone utility and its senior management will continue to establish priorities and respond to local conditions as it does today. The Chief Executive Officer of Washington Gas will continue to have the same authority as under the currently authorized approval levels. Mr. David Harris, the current President and Chief Executive Officer of AltaGas, will serve as President and Chief Executive Officer of the combined company following the merger.[20]

Post-merger, Washington Gas will continue to operate as a Maryland utility subject to the jurisdiction of the Maryland Public Service Commission. The Joint Applicants testify that the merger will not adversely impact any of the day-to-day operations of Washington Gas.

Because PUA § 6-105(g)(3)(i) requires the Commission to determine whether the proposed merger "is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers," AltaGas has offered commitments that it argues satisfy this statutory standard. In addition to the commitments contained in the original Application, AltaGas has added commitments through its testimony and subsequent filings. Furthermore, the Settling Parties enhanced the proposed merger with

[18] Ellen Lapson, witness for the Joint Applicants, testified that the golden share is a non-economic interest in the SPE that, coupled with other measures, will "greatly reduce any possibility of a voluntary bankruptcy filing by either the SPE or Washington Gas for any cause other than the financial distress of Washington Gas." Lapson Direct at 37. For example, a voluntary bankruptcy petition by the SPE or by Washington Gas would require the affirmative consent of the holder of the golden share, in addition to the unanimous vote of the SPE's board of directors.

[19] Application at 9.

[20] *Id.* at 6-7.

the inclusion of additional conditions. Several commitments, as reflected in the record, are highlighted below.

1. Direct Customer Benefits

In the Settlement, AltaGas proposes to provide all Washington Gas residential ratepayers in Maryland with a one-time $50 rate credit, totaling $21.7 million, within sixty days of consummation of the Merger.[21] AltaGas also proposes to fund certain Maryland programs as follows:

(a) $4.6 million to MEA to supplement MEA's programs targeted for the benefit of commercial and industrial customers;[22]

(b) $33 million to the Maryland Gas Expansion Fund to be administered by the MEA for the expansion of natural gas infrastructure;[23]

(c) $15 million to support Montgomery County energy distribution-related customer or educational programs;[24]

(d) $13.4 million to support Prince George's County's Transforming Neighborhoods Initiative ("TNI") Clean Energy Program, ENERGY STAR Certification & Green Leasing Program, and any other Prince George's County energy distribution-related customer or educational programs;[25] and

(e) $1.5 million to the Washington Area Fuel Fund to provide emergency gas utility bill assistance to specified Washington Gas customers that have either exhausted, or do not qualify for, low-income benefits, with at least $595,000 earmarked for Maryland customers.[26]

[21] Joint Applicants' Request for Adoption of Settlement, Attachment A at 2. The Joint Applicants' original Application proposed a rate credit to *all* Maryland customer classes (Joint Applicants' Nov. 6, 2017 Initial Brief, Appendix A at 2). However, the Settlement Agreement limited the rate credit to residential customers.
[22] Joint Applicants' Request for Adoption of Settlement, Attachment A at 2.
[23] *Id*. at 3.
[24] *Id*. at 4.
[25] *Id*.
[26] *Id*. at 6.

2. Public Interest Benefits

Washington Gas proposes to invest $70 million over a ten-year period to further extend natural gas service to areas within Washington Gas's service territory, with proposals for the use of such funds to be jointly developed by AltaGas, Washington Gas, and MEA and presented to the Commission for review and approval.[27] AltaGas offers to develop or cause to be developed 5 megawatts (MW) of either electric grid energy storage, Tier 1 renewable resources, combined heat and power resources, or other distributed generation in Maryland within five years after merger closing, with at least 2.5 MW being developed in both Montgomery County and Prince George's County.[28] AltaGas proposes to provide $450,000 to fund a study to assess the development of renewable (bio) gas facilities in the Greater Washington, D.C. metropolitan area[29] and a new public safety program at Washington Gas focused on preventing third party excavation damages through increased staffing and resources in the areas of excavator training and community engagement, education, and outreach.[30] Further, AltaGas commits to provide at least $1.2 million in charitable contributions per year for ten years in the Greater Washington, D.C. area.[31] Finally, Washington Gas commits to continuing its supplier diversity efforts in accordance with the Memoranda of Understanding with the Commission, and sets the aspirational goal to increase its share of non-gas spending with diverse suppliers to 35% over the next ten-year period.[32]

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[27] These funds would be recoverable in rates, subject to the Commission's prudency review in rate cases. *Id. at 3.*
[28] *Id.*
[29] *Id.* at 6.
[30] *Id.*
[31] *Id.* at 7.
[32] *Id.*

3. Additional Commitments

AltaGas's additional commitments include a pledge to relocate the head office of the AltaGas U.S. power business to Prince George's County, Maryland;[33] to maintain safe and reliable service and develop programs intended to increase safety and reliability;[34] to develop the role of the Greater Washington D.C. area in the fields of management and corporate presence;[35] and to set forth plans for maintaining and increasing employment levels,[36] among other matters.

Several commitments made by the Joint Applicants pertain to ring fencing and credit rating protections that would take place at merger closing, including, but not limited to, Washington Gas's pledge to maintain separate records and accounts,[37] to hold all of its property in its own name,[38] to not use as collateral or grant a lien on any asset for the benefit of AltaGas,[39] and to be a wholly-owned, direct subsidiary of the SPE, established for the sole purpose of ring fencing Washington Gas in order to protect it from any financial hardship experienced by AltaGas.[40] Washington Gas also commits to not pay extraordinary dividends to its parent company for three years after merger closing.[41]

Finally, Joint Applicants include multiple commitments in the areas of cost accounting, tax, and rate neutrality. Specifically, Joint Applicants commit to not issue

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[33] *Id.* at 5.
[34] *Id.* at 7 and 8.
[35] O'Brien Post-Settlement Testimony, Exhibit JDO-3 at 8.
[36] *Id.* at 9.
[37] *Id.* at 10.
[38] *Id.*
[39] *Id.*
[40] *Id.* at 11.
[41] Joint Applicants' Initial Brief, Appendix A at 10.

debt or equity in connection with, or to fund, the merger,[42] to not seek recovery in distribution rates of certain identified costs and fees,[43] to ensure that merger accounting is rate-neutral for Washington Gas customers,[44] and to the adoption of a Most Favored Nation clause to the merger, so as to ensure that Maryland customers are treated equitably as compared to District of Columbia customers.[45]

C. Procedural History[46]

On April 24, 2017, the Joint Applicants submitted their Application along with the supporting testimony and exhibits of fourteen witnesses,[47] as well as the information specifically required by PUA § 6-105(f). Because the Application would grant AltaGas the power to exercise substantial influence over Washington Gas, and because AltaGas would become an affiliate of Washington Gas subsequent to the merger pursuant to PUA § 6-105(e), we initiated Case No. 9449 to evaluate whether the Application was "consistent with the public interest, convenience and necessity, including benefits and no harm to consumers…" as required by PUA § 6-105(g)(3)(i).

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[42] O'Brien Post-Settlement Testimony, Exhibit JDO-3 at 13.
[43] *Id.* at 9 and Joint Applicants' Initial Brief, Appendix A at 11.
[44] O'Brien Post-Settlement Testimony, Exhibit JDO-3 at 14.
[45] *Id.* at 8. The District of Columbia Public Service Commission is the only remaining state Commission that has not ruled on this multi-jurisdictional merger request.
[46] Although not directly relevant to our own inquiry into this merger Application, as a procedural matter, this merger involves multiple reviewing agencies. The proposed cash-for-stock transaction was authorized by the Federal Energy Regulatory Commission ("FERC") on July 6, 2017. The Virginia State Corporation Commission ("VSCC") approved the proposed transaction on October 20, 2017. On July 17, 2017, the proposed transaction was deemed approved by the Federal Trade Commission and the United States Department of Justice. On July 28, 2017, the Committee on Foreign Investment in the United States determined that there are no unresolved national security concerns with respect to the transaction. In addition to the instant matter before this Commission, the Joint Applicants' filing seeking approval of the proposed merger remains pending with the District of Columbia Public Service Commission.
[47] The fourteen witnesses whose testimony was submitted in support of the Application were David M. Harris, Terry D. McCallister, John D. O'Brien, Jr., Adrian P. Chapman, Shaun W. Toivanen, Colleen Starring, Alex Patterson, Luann S. Gutermuth, Tracy L. Townsend, Marcellous P. Frye, Jr., William R. Ford, John J. Reed, Ellen Lapson, and Todd J. Jirovec.

On May 30, 2017, we conducted a pre-hearing conference to set a procedural schedule for this proceeding, address Petitions to Intervene, and consider any other preliminary matters.[48] Prior to this conference, in addition to the entry of appearances for the Office of People's Counsel ("OPC") and the Commission's Technical Staff ("Staff"), eleven parties petitioned to intervene.[49] At the conference, we granted all Petitions to Intervene.

Following the May 30, 2017 pre-hearing conference, we issued a Scheduling Order directing that discovery commence immediately, and established dates by which testimony and briefs were to be filed and on which evidentiary hearings were to be conducted. Pursuant to PUA § 6-105(g)(6) and upon a finding of good cause, the Commission extended by 45 days the 180-day period by which it is otherwise required to issue a decision on the merger, or until December 5, 2017.[50]

Pursuant to our Scheduling Order, NCLC, AOBA, Prince George's County, Montgomery County, Staff, MEA, OPC, and the Joint Applicants submitted written testimony prior to the August 14, 2017 deadline. Rebuttal testimony was subsequently filed by NCLC, the Joint Applicants, and OPC prior to the September 11, 2017 deadline. Staff, Montgomery County, AOBA, and OPC filed surrebuttal testimony on September

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[48] Order No. 88158

[49] The eleven parties that petitioned to intervene in this matter were Apartment and Office Building Association of Metropolitan Washington ("AOBA"), International Brotherhood of Teamsters Local No. 96 ("Local 96"), Potomac Electric Power Company ("Pepco"), Montgomery County, Maryland ("Montgomery County"), the United States Department of Defense and all other Federal Executive Agencies ("DOD/FEA"), the National Consumer Law Center, National Housing Trust, the Maryland Affordable Housing Coalition, and the Housing Association of Nonprofit Developers ("NCLC"), Maryland Energy Administration ("MEA"), Prince George's County, Maryland ("Prince George's County"), International Brotherhood of Electrical Workers Local No. 1900 ("Local 1900"), Baltimore Washington Laborers and Public Employees District Council ("BWLDC") an affiliate of the Laborers International Union of North America ("LiUNA") (hereinafter, "BWLDC/LiUNA"), and Local Union No. 2 of the Office & Professional Employees International Union, AFL-CIO, ("OPEIU Local 2"), (collectively, "Interveners").

[50] Order No. 88233 at 6.

27, 2017. We also conducted two evening hearings[51] within the Washington Gas service territory to solicit public comments.

Evidentiary hearings were conducted October 3 through 6, 10 through 13, and 16, 2017. On October 23, 2017, the Commission extended the deadline for the filing of written public comments until November 3, 2017. On November 6, 2017, Initial Briefs were filed by the following parties: Staff, OPC, Joint Applicants, MEA, Prince George's County, Montgomery County, AOBA, Local 1900, OPEIU Local 2, and DOD/FEA. Staff, OPC, Joint Applicants, Prince George's County, Montgomery County, and AOBA filed Reply Briefs on November 16, 2017.

On December 1, 2017, the Joint Applicants filed a Request for Adoption of Settlement. The Request stated that the Joint Applicants had entered into a Settlement Agreement with MEA, Montgomery County, Prince George's County, and BWLDC/LiUNA (collectively, "Settling Parties"). In the Request, the Joint Applicants claimed that the terms of the Settlement ("Settlement Commitments") would enhance the Merger and therefore asked the Commission to grant the Application, adopting as the conditions of its order the Settlement Commitments.

In light of the Settlement, on December 4, 2017 the Joint Applicants filed a Stipulation stating that the Application was to be deemed filed on August 22, 2017 so as to extend the deadline for the Commission to issue its order to April 4, 2018 in accordance with PUA § 6-105(g)(6).

On December 19, 2017, the Commission conducted a scheduling conference and

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[51] Public hearings were held on September 26 in Largo, Maryland and September 28 in Rockville, Maryland.

issued a Notice of Further Procedural Schedule.[52] On January 5, 2018, each of the five Settling Parties filed their respective testimony in support of the Settlement. On January 26, 2018, NCLC filed a letter in lieu of testimony. Post-settlement reply testimony was filed on January 29, 2018 by Staff, AOBA, OPC, and DOD/FEA. On February 5, 2018, the Joint Applicants filed post-settlement rejoinder testimony.

Evidentiary hearings were conducted on February 6, 7, 8, and 15, 2018. The Joint Applicants filed post-settlement rebuttal testimony on February 12, 2018. On February 16, 2018, the Commission extended the deadline for the filing of written public comments until March 2, 2018. The Joint Applicants, Staff, AOBA, Montgomery County, DOD/FEA, Prince George's County, OPC, and MEA filed post-settlement briefs on March 1, 2018.

D. Positions of the Parties

1. Staff

Staff opposed the merger prior to the settlement based largely on its belief that the transaction failed to meet the statutory criteria specified in PUA § 6-105 of being consistent with the public interest and providing benefits, but no harm, to consumers.[53] Recognizing the possibility that the Commission could disagree, Staff made several recommendations regarding conditions that should be placed upon the transaction in the event of approval.[54] The recommendations were intended to not only "assure some

[52] On January 16, 2018, an Amended Procedural Schedule was issued to add an additional evidentiary hearing date.
[53] Staff Post-Settlement Brief at 4.
[54] Staff's recommendations included, but were not limited to, the adoption of conditions that would maintain Washington Gas's current operations employee levels in Maryland, continue Washington Gas's efforts to replace or rehabilitate its infrastructure, improve customer service and safety practices, increase the rate credit per customer, and implement additional ring-fencing provisions. DiPalma Direct at 13, 25, 45, and 32; Lubow and Duffy Direct at 8.

minimal benefit to the residents of Maryland,"[55] but also to mitigate the potential for negative impacts to stakeholders. Nevertheless, Staff ultimately maintained the position that "no set of additional commitments or conditions will negate the current and predictable harms that this transaction will impose on Washington Gas customers and the State of Maryland."[56]

Post-settlement, Staff continues to recommend rejection of the merger based upon what it found to be systemic and underlying harms associated with the proposed transaction.[57] Staff contends that the agreement reached by the Settling Parties addresses only the benefits prong of the statutory standard, and not the prong requiring no harm to customers, and further that, at the evidentiary hearing held on the agreement, the Settling Parties' testimony focused only on what benefits were offered, and not on how harms were being mitigated.[58] Staff identifies two issues of particular concern. First, Staff contends that the minimum equity ratio which the Joint Applicants propose maintaining "fails to provide any meaningful protection for Washington Gas."[59] Second, Staff believes that the Most Favored Nations ("MFN") clause proposed as part of the agreement does not bring Maryland into parity with the District of Columbia, which should be the driving consideration for the provision.[60]

Furthermore, Staff notes that, while the focus of the Settlement Agreement is on customer benefits, two of the main provisions under the agreement do not qualify as benefits under the statutory standard.[61] Commitments 8 and 10A regarding the funding

[55] DiPalma Direct at 7.
[56] *Id.* at 5.
[57] Staff Post-Settlement Brief at 4.
[58] *Id.* at 4 and 5.
[59] *Id.* at 5.
[60] *Id*. at 7.
[61] *Id.* at 8.

of gas expansion projects are listed under the header "Direct Customer & Public Interest Benefits" in the Merger Commitments, but Staff contends that neither commitment can be counted as a direct benefit to Washington Gas ratepayers.[62] Commitment 8 pertains to state-wide expansion, with MEA acknowledging no intention to give priority to the Washington Gas territory; therefore, there is no guarantee of a direct benefit to existing Washington Gas customers.[63] Commitment 10A involves the spending of $70 million to be recovered from ratepayers. Staff notes that the Joint Applicants agree that this commitment should not be counted as a benefit.[64]

Again recognizing the possibility that the Commission could approve the transaction, Staff makes recommendations regarding more direct and certain benefits to ratepayers in the event of approval. Specifically, Staff recommends an increase in the residential customer rate credit to $100 per customer, as well as the restoration of the rate credit to Washington Gas's commercial and industrial customers.[65]

2. OPC

OPC opposed the transaction prior to the Settling Parties reaching the Agreement. Much emphasis for the opposition was placed on the financial harm that OPC believed Washington Gas would suffer in the event of approval, due in large part to its contention that AltaGas is a very risky business that could jeopardize WGL's financial condition.[66]

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[62] Commitment 8 requires AltaGas to deposit $33 million into a fund that will be used at the discretion of MEA to promote economic development, job creation and natural gas infrastructure expansion throughout the State of Maryland. These funds cannot be recovered in rates. Commitment 10A requires Washington Gas to work with MEA to invest $70 million over a ten-year period to expand the natural gas infrastructure in its service territory. *Id.* at 8. Washington Gas may request that these funds be recovered in rates, subject to the Commission's prudency review.
[63] *Id.* at 9.
[64] *Id.* at 14.
[65] *Id.* at 17.
[66] In support of this contention, OPC pointed to AltaGas's declining stock price and growing dividend payout ratio, as well as weaknesses in the Canadian dollar. Arndt Direct at 6 and 7.

OPC also opposed the pre-settlement transaction based on its overall belief that the merger offered little to no benefits to Maryland ratepayers; the alleged lack of attention towards service improvements, safety, and reliability initiatives; and an unacceptably low one-time bill credit of $50 per customer.[67] Finally, OPC did not find the pre-settlement proposal to be "consistent with the public interest" as required by PUA § 6-105. OPC asserted that AltaGas's interest was in controlling Washington Gas to gain a "foothold" and a "platform" for earnings growth and future acquisitions, while WGL's interest was in selling a public franchise for private gain, given the "windfall" its shareholders would reap.[68] OPC argued that no one appeared to have the interest of Washington Gas's Maryland ratepayers in mind, despite the fact that it was the ratepayers who created the safe, reliable income streams for WGL that now attract AltaGas and will reward WGL's shareholders.[69]

OPC continues to oppose the transaction post-settlement, claiming that the current proposal still does not satisfy PUA § 6-105. Alleging a lack of benefits, OPC states that a focal point of the Settlement, the gas expansion programs, may just as likely benefit future customers and non-Washington Gas customers, and that the benefits to current Washington Gas customers are unknown, due in large part to the absence of any plan or analysis as to how the gas expansion funds would be spent.[70] OPC also finds that the transaction does not satisfy the public interest requirement in the statute, pointing to the

[67] "The one-time $50 bill credit does not make a meaningful contribution to bill affordability in the Washington Gas service territory." Colton Direct at 24.
[68] Hempling Direct at 105.
[69] Arndt Direct at 5-6.
[70] OPC Post-Settlement Brief at 3.

"extreme disparity" between shareholder benefits from the acquisition premium and the rate credits to Washington Gas customers and payments to others under the Settlement.[71]

Most significant to OPC's opposition, however, is its allegation that the Settling Parties failed to eliminate the harms as part of their agreement.[72] OPC maintains that the Settlement does not sufficiently address, let alone resolve, the financial risks to Washington Gas, should the transaction be approved. OPC contends that AltaGas's unfavorable financial metrics[73] could lead to an increased cost of equity for Washington Gas and higher rates for its customers, and that the Settlement provisions intended to address such concerns are insufficient.[74]

OPC contends that the financial risks of AltaGas are so pervasive that no set of conditions would satisfy the statute's "no harm" requirement.[75] Recognizing, however, that the Commission could disagree and approve the transaction, OPC encourages the Commission to modify the MFN provision proposed in the Settlement. Currently, the provision compares the benefits of one jurisdiction to another based on the size of the rate base in a given jurisdiction. OPC urges the Commission to instead base the benefits comparison on the actual customer counts of the jurisdictions, stating that doing so is essential to arriving at a fair outcome.[76]

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[71] *Id.*
[72] *Id.* at 2.
[73] In support of this position OPC points to AltaGas's weak earnings history, inferior credit rating, lack of retained earnings, payment of dividends in excess of earnings, and substantial accumulated deficit. *Id.* at 4 and 5.
[74] *Id.* at 7.
[75] *Id.* at 4.
[76] *Id.* at 30.

3. MEA

Prior to the Settlement, MEA took the position that the merger did not satisfy the requirements of PUA § 6-105(g),[77] and thus made several recommendations as to how to modify the proposed merger. MEA identified several sources of both financial and non-financial risk to Maryland ratepayers, as well as measures to be taken that would both mitigate such risks as well as more appropriately direct available benefits toward Maryland stakeholders.

As one of the Settling Parties, MEA now contends that the Settlement allows the transaction to meet the statutory requirements for approval.[78] MEA finds that the Settlement includes terms to help enhance the safety and reliability of natural gas delivery, and to provide educational programs and job training that will promote energy efficiency.[79] As to previously found harms, MEA claims that the Settlement's enhanced commitments provide sufficient ring fencing measures and mitigate concerns that AltaGas's financial circumstance might lead to rate increases for Washington Gas customers.[80]

MEA is primarily focused on the provisions within the Settlement that are devoted to increasing access to natural gas.[81] MEA contends that this expansion will help to achieve cleaner air standards, provide job growth and training, and promote economic development. MEA also touts its ability under the Settlement to contribute to and bolster

[77] Michelfelder Direct at 3.
[78] MEA Settlement Brief at 2.
[79] *Id.*
[80] *Id.*
[81] The $33 million fund to be administered by MEA and the commitment by Washington Gas to spend $70 million above existing expansion plans in order to increase natural gas infrastructure throughout the Washington Gas service territory within ten years. *Id.* at 3.

investments made in this area by utilities looking to expand their service.[82] Finally, MEA asserts that the funds being given to it by AltaGas to promote energy efficiency for commercial and industrial ("C&I") customers will provide long-term benefits and opportunities for customers.[83]

MEA asserts that the Settlement adequately addresses the potential risk of harm. In support of its position, MEA points to Commitment 38, which ensures that for a period of eight years,[84] Washington Gas customers will not experience a rate increase due to an adverse impact on its cost of debt stemming from the merger. MEA also asserts that the ring-fencing and corporate cost allocations sufficiently protect consumers from potential harm, as will protective measures included in the Settlement such as the condition that Washington Gas will not pay extraordinary dividends to AltaGas for at least three years after the merger closes.[85]

4. AOBA

AOBA did not support the merger prior to the Settlement, alleging that it was not consistent with the public interest and would not sufficiently benefit Washington Gas and its Maryland ratepayers. AOBA identified several alternatives to the merger conditions it found most problematic, but ultimately argued strongly that the Commission should reject the Application outright.[86]

AOBA has not changed its position post-settlement. While the Settlement increases the funds given to the State, AOBA questions how those dollars are to be funded and the impact of those dollars on AltaGas's already weak financial position,

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[82] *Id.*
[83] *Id.* at 6.
[84] During the hearing, AltaGas expanded this commitment to include an indefinite time period. Tr. at 2744.
[85] *Id.* at 7.
[86] B. Oliver Direct at 37.

among other things.[87] AOBA contends that the terms of the Settlement will increase costs to Washington Gas's Maryland ratepayers[88] and will lead to non-residential customers receiving inferior treatment to that of residential customers.[89] AOBA also holds that the proposed ring fencing is inadequately designed to protect Washington Gas,[90] and that the Commission should oversee the development of natural gas expansion programs.[91]

5. Montgomery County

Pre-settlement, Montgomery County took the position that, in order for the proposed merger to be approved as being in the public interest, additional benefits would need to be conferred upon Washington Gas's Maryland customers.[92] Montgomery County asserted that customer benefits should be comparable to those in the Exelon-PHI merger,[93] and should include investments in programs geared towards workforce development, energy efficiency and weatherization measures, and system and customer safety.[94]

As a Settling Party, Montgomery County now recommends that the Commission approve the transaction subject to the conditions provided in the Settlement Agreement. Montgomery County contends that the Settlement provides significant additional consumer benefits, including several financial commitments such as support for county programs, and supplemental funding for programs targeted to C&I customers and to the

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[87] AOBA Post-Settlement Brief at 2 and 3.
[88] *Id.* at 18.
[89] In particular, AOBA witness Bruce Oliver criticized the decision of the Settling Parties to remove non-residential customers from the rate credit. B. Oliver Response at 7.
[90] AOBA Post-Settlement Brief at 41.
[91] *Id.* at 42.
[92] Coffman Direct at 2.
[93] See, Case No. 9361, *In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc*., Order No. 86990, 106 Md. P.S.C. 95 (2015) at 123. ("Exelon – PHI").
[94] *Id.* at 11-13.

Washington Area Fuel Fund to provide emergency gas utility bill assistance.[95] Montgomery County also points to other commitments such as the expansion of natural gas and an increase in charitable contributions as support for its request that the Commission approve the transaction.[96]

6. Prince George's County

Prince George's County did not take an overall position on the merger pre-settlement, but did request additional terms and conditions for the benefit of Prince George's County. The request included, but was not limited to, additional funding for the County's Transforming Neighborhoods Initiative ("TNI") and ENERGY STAR Certification program,[97] contribution to the development or funding of battery energy storage,[98] and the development of Tier 1 renewables in the County.[99]

Prince George's County is a Settling Party and therefore now requests that the Commission approve the transaction. The Joint Applicants satisfied the pre-settlement requests made by Prince George's County. The commitments that stem therefrom, in addition to the initial commitments made and the added natural gas expansion programs, lead Prince George's County to claim that the terms of the Settlement Agreement meet the legal standard of PUA § 6-105.[100]

7. NCLC

Prior to the Settlement, NCLC did not take an overall position on the merger, but rather made recommendations regarding energy efficiency improvements that it asserted

[95] Montgomery County Post-Settlement Brief at 4.
[96] *Id.*
[97] Bannerman Direct at 12-16.
[98] *Id.* at 17.
[99] *Id.*
[100] Prince George's County Settlement Brief at 2.

should be included in the event of approval.[101] Post-settlement, NCLC shared its concerns regarding the Settlement Agreement as well as its modification requests with the Joint Applicants, Prince George's County, and Montgomery County.[102] They agreed to make changes to the proposed Settlement as suggested by NCLC, which are contained within the "County Program Support" section of the proposed Settlement.[103] These changes include funds being apportioned to investments in multifamily affordable housing and the inclusion of NCLC in the development of multifamily-specific programs. Given the acceptance of these terms, NCLC states that it has no objection to the Commission approving the Settlement.[104]

8. Local 1900

Local 1900 does not take a position on the overall merger, but rather requests that, if the proposed transaction is approved, the Commission include three employment-related conditions upon the approval. First, Local 1900 urges the Commission to include Joint Applicants' Commitment 20, which provides that Washington Gas will honor all existing collective bargaining agreements.[105] Second, Local 1900 asks that the Commission remove the phrase "in the aggregate" from Joint Applicants' Commitment 21 (relating to employment and compensation), claiming that the phrasing substantially weakens any protections afforded by the Commitment to employees of Washington Gas and other WGL affiliates. Third, Local 1900 requests that Joint Applicants' Commitment 22, which pledges to increase the number of employees at Washington Gas and its

[101] Nedwick Direct at 6.
[102] NCLC Letter in Lieu of Testimony at 2.
[103] *Id.*
[104] *Id.* at 3.
[105] Local 1900 Initial Brief at 2.

affiliates, include a provision stating that at least fifteen of the additional positions be located in Maryland.[106]

9. OPEIU Local 2

OPEIU Local 2 did not take an overall position on the merger pre-settlement, but rather made two requests of the Commission if the transaction were to be approved. Post-settlement, OPEIU Local 2 contends that the Settling Parties failed to address its concerns, and urges the Commission to implement its two requests in the event the transaction is approved.[107]

First, OPEIU Local 2 asks that the Commission condition merger approval on the agreement by the Joint Applicants to not merge the Washington Gas pension plan with any pension plan maintained by AltaGas or its affiliates.[108] In support of its request, OPEIU Local 2 notes that the Washington Gas pension plan currently has an asset surplus, whereas the various United States affiliates of AltaGas maintain pension plans with tens of millions of dollars in unfunded benefit liabilities.[109] OPEIU Local 2 contends that segregating the pension plans will avoid potential financial harm to the Washington Gas pension plan, as well as to Washington Gas ratepayers.[110]

OPEIU Local 2's second request is that the Commission include in any approval of the merger the requirement that Washington Gas return its customer service call

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[106] *Id.* at 4-5.
[107] OPEIU Local 2 Settlement Brief at 1.
[108] OPEIU Local 2 Initial Brief at 4.
[109] *Id.* at 1. The Washington Gas pension plan with the United States Department of Labor has an asset surplus of approximately $118 million over its required funding target for plan benefits, with assets of $788.3 million and a funding target of $669.9 million. AltaGas reported in 2016 that the pension plans maintained by its United States affiliates had a combined $63.9 million pension liability as of December 31, 2016. *Id.* at 5-6.
[110] *Id.* at 6. Given that utilities may recover expenses arising from pension contribution liability only in rates, that increased pension expense to Washington Gas could lead to a rate increase. *Id.* at 4.

centers "in-house" within its service area using Washington Gas direct employees.[111] Washington Gas began outsourcing its call centers approximately ten years ago, and in 2015 entered into a new subcontracting arrangement for call centers, all of which are located outside of Washington Gas's service area.[112] OPEIU Local 2 notes that the performance of the call centers has been subpar, and contends that returning customer service call centers to the Washington Gas service area, and utilizing Washington Gas's own customer service employees, would both improve customer service and facilitate the Commission's regulatory oversight of call center operations.[113]

10. DOD/FEA

DOD/FEA took no position on the overall merger prior to the Settlement.[114] Post-settlement, DOD/FEA opposes the transaction based almost solely on the removal from the Settlement of the approximately $8.8 million rate credit to non-residential customers.[115] During the hearing, Dr. Goins acknowledged that "the focus" of his testimony was on the inequity of removing the rate credit to nonresidential customers.[116] He observed that the Applicants originally proposed a "direct and tangible benefit … to all customers, not a segment of customers."[117] However, in reaching a limited settlement agreement among themselves, the Settling Parties inappropriately eliminated the credit to C&I customers, even though the Settling Parties had previously "explicitly talked about

[111] *Id.* at 2.
[112] *Id.*
[113] *Id.*
[114] Pre-settlement, DOD/FEA made one request regarding the allocation of the rate credit to non-residential customers in then-Commitment 1. Specifically, DOD/FEA requested that the credit to non-residential customers be allocated based upon non-gas revenues or on a volumetric basis rather than divide the rate credit evenly among metered accounts as with residential customers so as to ensure a just and reasonable distribution. DOD/FEA Initial Brief at 2 and 3.
[115] DOD/FEA Post-Settlement Brief at 3.
[116] Tr. at 3161.
[117] Tr. at 3159.

the value of rate credits to all customer classes."[118] Dr. Goins concluded that the original merger proposal would have been in the public interest, because it would have provided a "direct and immediate cushion" against potential financial harm to all customers, but that the proposal advanced by the Settling Parties was not, because it removed the rate credit to nonresidential customers. DOD/FEA contends that neither the Settlement Agreement nor the testimony of any witness from a Settling Party discusses why non-residential customers are now being deprived of the rate credit.[119] Finally, DOD/FEA claims that, while under the Settlement $4.6 million is being given by AltaGas to MEA for the benefit of C&I customers, no analysis was performed or provided to show that all non-residential customers will benefit therefrom as they would have through the rate credit.[120]

11. <u>BWLDC/LiUNA</u>

BWLDC, through its affiliated local LiUNA unions, represents approximately 800 workers employed by multiple Washington Gas construction contractors.[121] While Commitment 20 states that Washington Gas will honor all existing collective bargaining agreements, BWLDC/LiUNA entered into a Community Benefits Agreement with AltaGas to ensure the same protections are afforded to Washington Gas's contractor employees who are covered by an existing collective bargaining agreement.[122] The Community Benefits Agreement also benefits those who perform services in the pipe replacement and traffic control fields.[123] BWLDC/LiUNA, a Settling Party, did not take a position on any other aspects of the Settlement.

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[118] Tr. at 3160-61.
[119] *Id.*
[120] *Id.* at 4 and 5.
[121] Allison Direct at 3.
[122] *Id.* at 4.
[123] *Id.* at 4 and 5.

III. STANDARD OF REVIEW

As discussed in Case No. 9173, PUA § 6-105 provides us with "broad discretion within a narrow legal space."[124] Our task here is to determine whether this transaction is "consistent with the public interest, convenience and necessity, including benefits and no harm to ratepayers."[125] The Joint Applicants bear this burden to prove that their transaction satisfies the requirements of § 6-105.[126]

PUA § 6-105 allows for three possible outcomes. If we conclude that the transaction as proposed is "consistent with the public interest, convenience and necessity, including benefits and no harm to consumers," we "shall issue an order granting the application."[127] If the transaction fails to satisfy any one of those three requirements, we "shall issue an order denying the application."[128] Or, we may approve it with conditions that address and remedy the aspects of the transaction that prevented us from approving it on its face.[129] Section 6-105(g)(2) contains the non-exclusive list of factors we must consider in reaching these conclusions:

1. the potential impact of the acquisition on rates and charges paid by customers and on services and conditions of operation of the public service company;

2. the potential impact of the acquisition on continuing investment needs for the maintenance of utility services, plant, and related infrastructure;

3. the proposed capital structure that will result from the acquisition, including allocation of earnings from the public service company;

4. the potential effects on employment by the public service company;

[124] *Re Baltimore Gas and Electric Company*, 100 Md. P.S.C. 348, 361 (2009) ("CEG/EDF").
[125] PUA § 6-105(g)(3).
[126] PUA § 6-105(g)(5).
[127] PUA § 6-105(g)(3)(i).
[128] PUA § 6-105(g)(4).
[129] PUA § 6-105(g)(3)(ii).

5. the projected allocation of any savings that are expected to the public service company between shareholders and ratepayers;

6. issues of reliability, quality of service, and quality of customer service;

7. the potential impact of the acquisition on community investment;

8. affiliate and cross-subsidization issues;

9. the use or pledge of utility assets for the benefit of an affiliate;

10. jurisdictional and choice of law issues;[130]

11. whether it is necessary to revise the Commission's ring fencing and code of conduct regulations in light of the acquisition; and

12. any other issues the Commission considers relevant to the assessment of the acquisition in relation to the public interest, convenience, and necessity.[131]

The Commission has considered the present statutory standard of PUA § 6-105(g)(3) in several previous cases,[132] and has determined that the statute requires that the Commission analyze three distinct questions:

1. Is the transaction consistent with the public interest, convenience and necessity?

2. Will the transaction yield benefits to the utility's ratepayers?

3. Is the transaction structured not to harm the utility's ratepayers?[133]

While the latter two inquiries (benefits and no harm) focus on the utility's ratepayers,[134] the first inquiry (public interest, convenience and necessity) focuses on the

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[130] There is no dispute that the Commission will retain the same regulatory and oversight authority over Washington Gas. Application at 29.

[131] PUA § 6-105(g)(2).

[132] *E.g.*, CEG/EDF; *In the Matter of the Application of the Merger of FirstEnergy Corp. and Allegheny Energy, Inc.*, 102 Md. P.S.C. 11 (2011) ("FE/Allegheny"); *In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.*, 103 Md. P.S.C. 22 (2012) ("Exelon/CEG"); *In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc.* 106 Md. P.S.C. 95 (2015).

[133] CEF/EDF, 100 Md. P.S.C. at 363.

[134] *Id.*

society at-large.[135] If the transaction does not allow each of the three inquiries to be answered in the affirmative, PUA § 6-105(g)(4) requires the Commission to deny the application. "Public interest," "benefits . . . to consumers," and "no harm . . . to consumers" are separate concepts that require distinct findings.[136] However, PUA § 6-105(g)(3)(ii) permits the Commission to "condition an order authorizing the acquisition on the applicant's satisfactory performance or adherence to certain requirements."[137]

The Commission has previously held that "benefits" must be "certain, measurable and incremental benefits to ratepayers."[138] With regard to "no harm" the Commission has held, "[t]he statute requires us to ensure that ratepayers are protected against any increased risks of harm from this merger, it is our job to eliminate them, either by denying approval outright or through conditions, not to offset them with benefits."[139] "We are charged instead with the task of ascertaining the 'public interest, convenience and necessity' vis-à-vis the proposed transaction and then, within that broader public interest notion, whether the transaction will offer 'benefits and no harm to consumers.'"[140] Our obligation in this case is first to evaluate, based on the Application, the testimony and comments of the parties, the Settlement Commitments and all revisions, and whether the Settlement proposal meets the requirements of § 6-105. We have carefully applied this statutory standard and our prior precedents to the facts of this specific case, as every merger proposal is different. We have sorted through the potential for harm, and the protections proposed to eliminate them; actions proposed to ensure consistency of the transaction with the public interest; and lastly, the measureable and

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[135] FE/Allegheny, 102 Md. P.S.C. at 361.
[136] CEG/EDF, 100 Md. P.S.C. at 361.
[137] *Id.* at 360.
[138] Exelon/CEG, 103 Md. P.S.C. at 45.
[139] *Id.* (emphasis in original.)
[140] CEG/EDF, 100 Md. P.S.C. at 361.

certain offers to benefit the short- and long-term interests of the WGL customers in Maryland.

IV. COMMISSION DECISION

Although we find that we cannot merely approve the Settlement Agreement as proposed, we find that subject to the modifications provided in the Conditions in Appendix A, we can approve the merger of AltaGas Ltd. and WGL Holdings, Inc. because it meets all three prongs of PUA 6-105(g)(3)(ii). Namely, it is consistent with the public interest, convenience, and necessity; we have adequately mitigated any potential harms to consumers; and it benefits both Washington Gas customers and consumers generally. The Maryland Energy Administration, Montgomery and Prince George's Counties, and the Baltimore-Washington Construction and Public Employees Laborers' District Council, as well as numerous public and elected officials have all supported this merger going forward, and we agree that it meets the statutory test as revised in Appendix A.

The issue of AltaGas's financial weakness has been the primary driver of the opposition to our approval of this merger. In fact, several witnesses, otherwise inclined to support the benefits laid out in the Settlement Agreement, have argued that these payments only further weaken the financial stability of AltaGas.[141] OPC cites to our holding in Exelon/Constellation:

> "The statute requires us to ensure that ratepayers are protected against any increased of harm from this Merger, it is our job to eliminate them, either by denying approval outright or through conditions, not to offset them with benefits."[142]

[141] Arndt (OPC), Lubow (Staff) and Oliver (AOBA).
[142] Exelon/Constellation at 37-38.

We have been clear that the literal interpretation of "no harm" does not equate to a statutory mandate that we reject an Application if we can conceive of even a *de minimis* increase in the possibility of something undesirable occurring to Maryland ratepayers. We have imposed the strictest of ring-fencing and reporting requirements, and we intend to ensure that the Applicants comply with all of them. In the course of all of the § 6-105 proceedings before this Commission, we have imposed hundreds of conditions, and no party has yet violated or sought to undermine any of them. We have no reason to believe approving this transaction will differ from those that came before it.

Additionally, while one might look nostalgically at Washington Gas as our homegrown utility and desire to lock in time the company's destiny, the state of the natural gas industry and the direction that WGL, Washington Gas's parent company, intends to take into unregulated ventures and growth, requires us to consider this new reality when evaluating the *status quo* versus the future. We are persuaded that this merger better positions Washington Gas for success by, among other benefits, providing it with the shared resources as part of a larger family of companies. The merger will also incorporate important ring-fencing protections and other conditions to protect Washington Gas from the potential harms of business risks found outside regulated monopolies. The protections proposed in this Order do not currently exist for Washington Gas and its customers.

With that said, we turn to our analysis of the specific requirements of PUA § 6-105. After considering the twelve factors contained in PUA § 6-105(g)(2) (including the final "catch-all" provision), PUA § 6-105(g)(3) authorizes the Commission to approve a transaction subject to certain conditions. As discussed below, we approve this transaction subject to the Applicants accepting the Conditions (most of which they have offered themselves) contained in Appendix A to this Order, which are necessary to conform this transaction with the public interest.

A. Benefits to Consumers

Based upon the definition of "benefits" reflected in prior cases the Commission has reviewed under § 6-105, we conclude that several of the Applicants' Commitments satisfy the statutory requirement of direct benefits to ratepayers.

1. Direct Customer and Public Interest Benefits

PUA § 6-105(g)(2)(i) directs the Commission to evaluate "The potential impact of the acquisition on rates and charges paid by customers and on the services and conditions of operation of the public service company." Pursuant to PUA § 2-113(a), one of the primary duties of the Commission is to ensure customers receive reliable utility services at reasonable rates.

The most immediate and direct financial benefit to Washington Gas ratepayers is in the form of a rate credit. In their initial Application, the Applicants proposed a $30.5 million one-time bill credit to be distributed to *all* customer classes. This would have resulted in a $50.00 rate credit for each Washington Gas residential heating customer. In the proposed settlement currently before us, Applicants have reduced this proposed rate credit to $21.7 million, with the entire amount reserved for residential ratepayers.[143]

We do not believe it is appropriate to exclude Washington Gas's non-residential customers, including Commercial and Industrial (C & I) customers from receiving a direct benefit of the transaction. As a result, we have restored the approximately $8.8 million allotted to non-residential customers, returning the total rate credit to the original

[143] Settlement Agreement ¶ 3.

$30.5 million.[144] This addition will not otherwise affect the overall money to be distributed pursuant to the parties' settlement.[145] We conclude that a direct rate credit is more appropriate as it treats Washington Gas's rate classes similarly.

As we have concluded in all prior cases we have analyzed under § 6-105, we conclude here that this rate credit provides a direct benefit to Washington Gas ratepayers. The Applicants have also agreed to several conditions to protect against any indirect adverse effect on customer rates, including that AltaGas will not seek recovery in rates of any acquisition premium, transaction costs, legal fees, or regulatory compliance fees.[146]

Finally, in order to partially offset the costs of restoring the nonresidential rate credit, we will remove AltaGas's Commitment to provide $4.6 million to MEA to promote various programs related to C & I customers; however, we will require that at least $4.6 million of the MEA funds provided by AltaGas be deployed in Calvert, Charles, Frederick and St. Mary's counties.[147]

[144] Condition No. 1. The Condition requires that the remainder of the $30.5 million rate credit be applied to non-residential ratepayers, once each Washington Gas residential heating customer receives their $50 rate credit (and each residential non-heating customer receives their $27 rate credit).

[145] In order to restore the non-residential rate credit and maintain total customer benefits at an amount unchanged from that proposed by the settling parties, and in order to keep the proportion of benefits consistent with record evidence regarding rate base, the Commission has made the following changes: The Commission has restored approximately $8.8 million in the non-residential rate credit so that the Applicants' original $30.5 million rate credit number is reestablished. Additionally, the Commission has required $4 million for safety programs, as described below. Of the $66 million of benefits originally proposed for MEA and County programs, $53.2 million will now be available. Because under the Settlement Agreement MEA received 57% of the $66 million in benefits, the MEA will now receive $30.32 million (57% of $53.2 million). Similarly, the Counties, which received 43% of the benefits, will now collectively receive $22.88 million. Under the Settlement Agreement, Montgomery County received 53% of County benefits to run distribution-related customer or educational programs. Montgomery County will now receive 53% of $22.88 million, or $12.13 million. Similarly, Prince George's County will receive 47% of the $22.88 million, or $10.75 million.

[146] Condition Nos. 43-44. *See also*, Condition No. 45 ("AltaGas will ensure that merger accounting is rate neutral for Washington Gas customers").

[147] Settlement Agreement ¶ 4.

2. Synergy Savings

There has been testimony from the Applicants, primarily Mr. Jirovic, that synergy savings beginning in the sixth year after the close of the merger would be $2.8 million per year.[148] This savings would lower customer distribution rates and thereby help satisfy this prong of the statute. Additionally, the Applicants committed to ensure that "customer rates reflect an annual net benefit to Washington Gas's Maryland customers of not less than $800,000 per year over the five years following Merger Close."[149]

Although some parties have contended here, and in prior cases under § 6-105, that post-merger synergy savings are too vague to quantify,[150] we conclude that this Condition ensures that customer rates will decline or otherwise be lower than they would have been absent the merger and therefore complies with this portion of our statute. Also, as Applicants observe, unlike in most merger situations which do not realize synergy savings for years after closing, the Applicants are applying these savings to ratepayers beginning in the first year. Therefore, we find that the synergy savings will result in direct ratepayer benefits.

Based upon these conditions, we conclude that the record supports the conclusion that the Applicants have complied with Section 6-105(g)(2)(i).

3. AltaGas Funded Expansion of Natural Gas in Maryland ("Maryland Gas Expansion Fund")

AltaGas has committed to deposit $33,000,000 into a fund (the "Maryland Gas Expansion Fund") with the goal of expanding natural gas infrastructure to underserved

[148] Tr. 1733.
[149] Condition No. 44, Appendix A. This Condition would therefore result in a reduction in distribution rates of $4 million over five years.
[150] The Commission has also alluded to the difficulty of quantifying these savings in previous orders. *Exelon/Constellation* at 90. As noted, the Applicants' Condition has allowed us to quantify these savings in the present case.

parts of Maryland.[151] As discussed below, we have reduced this amount to $30,320,000. Nonetheless, this fund clearly qualifies as a customer benefit pursuant to § 6-105. The Applicants claim that spreading out the fixed cost of these programs would likely result in no additional cost to ratepayers, and in fact, the Applicants testified that current customers will benefit from expansion because the fixed costs of the gas system will be spread over a larger base, thus reducing costs over time.[152] We find that testimony convincing. We additionally find that natural gas expansion is a direct benefit to both current and new customers of Washington Gas.[153] In addition, we have altered this Condition to require that MEA expend at least a majority of these funds within Washington Gas service territory, thus assuring that a majority of the benefit will accrue to Washington Gas customers. Additionally, we require that MEA expend at least $4.6 million of these funds within Calvert, Charles, Frederick and St. Mary's Counties.

The Applicants also presented evidence that this Fund will indirectly benefit Maryland through economic development, job creation, lower energy prices and carbon reduction, consistent with Maryland policy. The Applicants rely heavily on the testimony of Mr. Michelfelder who cited a 2016 report that quantified the general economic and the specific household savings resulting from access to natural gas service.[154] The Applicants also provided testimony as to the environmental benefits to Maryland as a whole, including replacing more emission-intensive fuel sources such as

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[151] This Fund is discussed in greater detail in Condition 7 in Appendix A.
[152] *See* Tr. at 2651.
[153] Natural gas expansion – paid for by AltaGas – will benefit new gas customers by extending to them the opportunity to purchase lower-cost energy, and it will benefit existing customers by spreading fixed costs over a larger population of customers. Tr. at 2651. Additionally, the Maryland Gas Expansion Fund will benefit Marylanders generally by expanding a relatively clean energy source (Tr. at 2941), in addition to providing economic benefits through expanding gas infrastructure (Tr. at 2950-52).
[154] Michelfelder Direct at 26; Ex. RAM-8.

coal.[155] Thus this Fund will strike the proper balance between benefits directly to Washington Gas ratepayers and consumers generally. Because these Funds will not be recoverable through Washington Gas utility rates, they constitute a benefit under section 6-105.

The dissent claims that this expansion benefits only future Washington Gas customers and therefore does not count as a benefit. However, § 6-105 does not limit benefits to current customers, many of whom may receive a rate credit just before they move out of the service territory, and many others may not receive a credit because they move into the service territory right after its issuance. Yet, many of our ring-fencing and other protective commitments are intended to protect Washington Gas customers from harms that may occur well into the future, thus to exclude future customers from consideration of benefits, while protecting them from future harms may lack consistency.

Additionally, OPC has criticized the distribution of benefits within the Application, claiming that they are too heavily weighted in favor of ratepayers outside of Washington Gas territory. We have addressed this issue. At least a majority of the benefits from the Maryland Gas Expansion Fund will be spent within Washington Gas service territory. Washington Gas ratepayers also will receive 100% of the benefits of the rate credit and synergy savings. We conclude that the current balance between benefits within and outside Washington Gas service territory is appropriate.

a. <u>*Funds to be provided to MEA*</u>

As discussed above, the Settlement Agreement provides that, within four months of Merger Close, AltaGas will deposit $33 million into a fund (the "Maryland Gas

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[155] Tr. 2716-2718 (Hibbard). Mr. Hibbard testified that the average household currently using heating sources such as electricity oil or propane could reduce their carbon dioxide by emissions by nearly 50%

Expansion Fund") to be administered by the MEA.[156] MEA will use these funds to "promot[e] the expansion of natural gas infrastructure to serve businesses, residents, industrial enterprises, and utility generation facilities in Maryland."[157] MEA will further submit an annual report with the Commission, describing how it is disbursing these funds.[158] While we have minimally reduced those funds to provide important rate credits to non-residential customers, the reporting requirements from the Settlement remain the same.[159]

The proposed settlement also provides that AltaGas "will provide $4,600,000 in funding to MEA to supplement MEA's programs targeted for the benefit of commercial and industrial customers."[160] As noted above, we have converted these funds into a direct rate credit for nonresidential customers.

b. *Funds to be provided to Montgomery and Prince George's Counties*

The Settlement Agreement provides that AltaGas will provide $28,400,000 in funding to support various county programs within Montgomery and Prince George's counties.[161] Specifically, Montgomery County would receive $15,000,000 to fund a variety of county programs, including weatherization, energy-efficiency, safety, renewable energy or educational development.[162]

[156] Settlement Agreement ¶ 5; Condition 7.
[157] *Id.*
[158] *Id.*
[159] MEA Director Tung expressed at the hearing on the Settlement that she was not opposed to the Commission moving funds from MEA or from setting parameters around the use of such funds resulting from a merger approval. Tr. at 2881, 2957-58.
[160] Settlement Agreement ¶ 4.
[161] Settlement Agreement ¶ 7.
[162] Settlement Agreement ¶ 7a.

Prince George's County would receive $13,400,000 to support similar programs as well as the County's Transforming Neighborhoods Initiative (TNI) Clean Energy Program and ENERGY STAR Certification & Green Leasing Program.[163]

As discussed above, although we have modestly reduced these amounts as well, on an annual basis, the Counties receiving monetary benefits pursuant this provision (incorporated as Condition 2, with several revisions) shall report their existing funding levels to this Commission in addition to how they are distributing this funding to ensure this Condition does not simply substitute for tax dollars spent on otherwise unrelated budget items.[164]

Additionally, we have re-allocated several of the proposed expenditures under this provision of the settlement agreement.[165] We did so to better comport with the public interest and to extend those benefits to a broader public both geographically and by rate class. Our goal in re-allocating this money was not to increase the overall investment by the Applicants. Additionally, we have maintained the percentages that Montgomery (53%) and Prince George's County (47%) were to receive under the Settlement. We have modestly lowered the amount overall to allow a more balanced allocation of funds, most notably providing non-residential customers with the rate credit contained in the original Application.

Under our revised allocation, Montgomery County will receive $12,130,000 and Prince George's County shall receive $10,750,000. Under the original settlement

[163] Settlement Agreement ¶ 7b.
[164] Condition 2.
[165] We have also amended Condition 11B to require Washington Gas to propose specific measurable safety measures to which it will invest $4 million.

proposal, MEA and the Counties received $66 million.[166] Under our re-allocation, these parties will share the same percentages of $53.2 million.[167] This re-allocation is therefore consistent with the weight of benefits proposed in the Settlement Agreement and results in the following funding changes:

Settlement Agreement	Commission Decision	Difference
$21.7 million rate credit	$30.5 million rate credit	$8.8 million
$4.6 million for MEA CDI programs	$0 for MEA CDI programs	-$4.6 million
$0 for safety programs	$4 million for safety programs	$4 million
$33 million for "Maryland Gas Expansion Fund"	$30.32 million for "Maryland Gas Expansion Fund"	-$2.68 million
$28.4 million to Montgomery and Prince Georges Counties	$22.88 million to Montgomery and Prince Georges Counties	-$5.52 million
Total : $87.7 million	**Total: $87.7 million**	**0**

4. Contribution to Fuel Fund

AltaGas has committed to provide $1.5 million of supplemental funding over the five years following Merger Close (or until expended) to the Washington Area Fuel Fund (WAFF) to provide emergency gas heating utility bill assistance to customers that satisfy WAFF's application requirements.[168] At least $595,000 of these contributions will be earmarked for assistance to qualifying customers in Maryland.

[166] $33 million to the MEA-administered fund, $4.6 million to MEA for C&I programs, and $28.4 million to the Counties.
[167] That is, MEA will receive 57%, and the Counties will receive 43%.
[168] Condition 3 in Appendix A. Additionally, Montgomery County has committed to "endeavoring" to direct at least 20% of the funds it receives pursuant to Condition 2a towards low and moderate-income residents.

No portion of these contributions will be recovered in Washington Gas's Maryland utility rates. We find this is a direct benefit to Washington Gas low income ratepayers.

5. Charitable Contributions

PUA § 6-105(g)(2)(vii) requires the Commission to consider "the potential impact of the acquisition on community investment." This requirement is also consistent with the public interest, and often the foundation of the communities in which businesses operate. To lose the level of voluntary annual charitable contributions a company like Washington Gas provides would create a harm, but AltaGas recognizes that potential loss and has pledged to provide at least $1.2 million in charitable contributions to the Greater Washington DC area. This would be a 20% increase over Washington Gas's historic level of charitable contributions. At least $475,000 of these funds will go directly to Maryland-based charities, but necessary and voluntary benefits such as these improve our neighboring jurisdictions, just as their charities improve ours. This benefit is encapsulated in more detail in Condition 10 of Appendix A, but we accept the premise as a direct benefit under PUA § 6-105.

6. Safety Program

As noted above and in Appendix A, we have incorporated a safety benefit that will result in direct benefits to Washington Gas customers. The Settlement Agreement states that Washington Gas will file a report with the Commission demonstrating how it intends to be "materially more aggressive towards increasing safety going forward."[169] On the stand, the Applicants' witness agreed that the increased safety programs would come at a cost,[170] and therefore the Commission orders that the cost of the increased

[169] Settlement Agreement and Stipulation ¶ 16, and Tr. at 2434.
[170] *See* Tr. at 2439-40.

safety promised by the Applicants as part of this transaction should not be borne by Washington Gas ratepayers. Therefore, the Commission has ordered Washington Gas to propose in its safety report pursuant to Paragraph 11B of the Settlement a specific leak mitigation process or other specific and measureable safety program, the costs of which shall be at least $4 million not to be recovered in rates. Moreover, we maintain the additional reporting requirements proposed by the Applicants and the Applicant's promise to be materially more aggressive toward safety.

B. Public Interest

1. Commitment to Expand Natural Gas in Maryland Over Ten Years

The Settlement Agreement provides that "[a]fter Merger Close, AltaGas and Washington Gas will work with MEA to jointly develop additional gas expansion proposals for the Commission's review and approval."[171] These proposals will be limited to Washington Gas's service territory and will be included in rate base.[172] Within ten years of Merger Close, Washington Gas will invest up to $70 million towards funding these programs. As with the Applicants, MEA supports this investment in expanding natural gas in Maryland by pointing to the environmental advantages natural gas has over (primarily) coal.[173]

Because this money will be recoverable in rates, we do not consider it a "benefit" as we have defined that term in section 6-105. We do however consider this investment to be in the "public interest" for the reasons we have discussed – primarily economic

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[171] Settlement Agreement ¶ 6 reflected in Condition 10A, Appendix A.

[172] *Id.* This Condition also explicitly states that "[n]othing in this paragraph shall be deemed to imply pre-approval by the Commission of any particular gas expansion project. The Commission shall retain its full authority to review any project for prudency prior to its being placed into rate base." These investments by Washington Gas will be treated like any other utility capital investment and reviewed for prudency by the Commission at the time they are completed, used and useful, and put into rates in a base rate case.

[173] Tr. 2945-2946 (Tung).

growth, improved environmental impact, job creation and improved service to currently underserved Maryland citizens. This investment is in addition to the funds directed to the Maryland Gas Expansion Fund, discussed above. Therefore this Merger could cause over $100 million to be directed towards expanding natural gas infrastructure within Maryland.

As initially proposed, the quarterly meetings required by this commitment were limited to Washington Gas, AltaGas and MEA. We acknowledge that MEA, as the State's energy policy office, has a leadership role in directing the Maryland Gas Expansion initiative, and anticipate they may need to engage in the exchange of confidential and proprietary information.[174] However, because these expenditures will be recoverable in rates, we conclude that the discussions should be open to all stakeholders and have amended that Condition accordingly. We have also required that participants discuss how to revise the Washington Gas cost-benefit test in Tariff GSP 14 to enable natural gas expansion to those seeking to use natural gas where it is not currently available.

We additionally amended this Settlement Agreement commitment to clarify that the $70 million gas expansion figure is aspirational, and not a mandate that this exact amount be spent. Additionally, we clarify that neither through this Order nor through any future submission by Washington Gas pertaining to a new test for gas expansion (or Commission order related thereto), are we preapproving any gas expansion project. To the contrary, in order to be recovered in rates, Washington Gas must include in a subsequent rate case the costs related to any new gas expansion and demonstrate that

[174] The integrity of any confidential or proprietary information should be protectable through properly executed confidentiality agreements.

such costs are prudent and otherwise appropriate for inclusion in rates. We further clarify that when Washington Gas and any other parties submit to the Commission a proposal for a new cost-benefit test for gas expansion projects, the company (and any other parties) should not include proposals for new expansion projects, but should only include the general geographic areas to which the company intends to expand. As stated, we will not preapprove gas expansion projects. Rather, we will review and open up to stakeholder input the reasonableness of any replacement cost-benefit test proposed. Finally, this gas expansion commitment is revised to require that MEA file with the Commission quarterly reports that detail the progress of stakeholder meetings on gas expansion, but refrain from discussing any individual gas expansion projects.

After our record closed, some environmental groups expressed opposition to the natural gas expansion provisions as being contrary to the State's policy on greenhouse gas reduction and its commitment to clean energy.[175] Their concerns were not developed in our record and consequently we cannot address them in this Order. The dissent raised similar concerns, including a concern that gas expansion could result in stranded assets over time. Although there is no evidence that assets will be stranded, we have provided for the input of such concerns through the open quarterly meetings. We encourage such groups to raise their concerns to MEA and discuss them at the quarterly meetings.

[175] E.g. Comment of Climate Stewards of Greater Annapolis, ML 219296; Comments of Chesapeake Climate Action Network, ML 219262. Nevertheless, significant record evidence supports the environmental benefits of expanded natural gas, including that home heating technologies fueled by natural gas result in lower carbon dioxide emissions than technologies that rely on higher carbon fuel sources such as fuel oil or propane. Hibbard Post-Settlement Rebuttal at 6. See also Tr. at 2716 (Hibbard) (increasing natural gas usage would displace marginal electricity fuel sources (largely coal), leaving carbon-free sources like nuclear generation running near full capacity.

2. Local Corporate Presence

AltaGas, Washington Gas and their affiliates have accepted Commission jurisdiction over this merger, as well as ongoing operational issues involving Washington Gas. The issue of local involvement over the day-to-day operation of Washington Gas is significant. Local presence and control leads to operational efficiency, even if hard to quantify.

Washington Gas has pledged that it will maintain its headquarters in the District of Columbia.[176] It has further pledged to relocate the head office of the AltaGas U.S. power business to Prince George's County within one year of Merger Closing, with the anticipation that other essential related corporate functions would follow within five years.[177] Additionally, the AltaGas Board of Directors and Executive Committee will include the Greater Washington, D.C. metropolitan area among the locations of their meetings, and the CEO of Washington Gas will sit on AltaGas's Board of Directors.[178] The balance of the commitments to local government reflect a good-faith effort to include Washington Gas executives in the decision-making process regarding utility management, and their commitments comply with what we have come to expect from previous Maryland mergers.

[176] Condition 13 to Appendix A.

[177] Condition 14 to Appendix A.

[178] Conditions 15-16 of Appendix A. Although the dissent argues that the merger's change in corporate governance may harm customers by allowing AltaGas to use Washington Gas profits to finance AltaGas activities, we observe that the ring fencing provisions contain protections that mitigate any such potential harm. For example, Condition 40 provides that Washington Gas will not pay dividends to its parent company to the extent that the payment would result in a drop of Washington Gas's equity level below 48% of its total capitalization. Absent the merger, this Condition, as well as other ring fencing provisions, would not be available to protect Washington Gas and its ratepayers.

3. Supplier Diversity

As we have required in all of our prior cases pursuant to § 6-105, we find that a commitment to supplier diversity efforts to be within the public interest. Similarly, Washington Gas has committed to continue its supplier diversity efforts as outlined in the Memoranda of Understanding with the Commission, and will commit to an aspirational goal to increase the company's share of non-gas spending with diverse suppliers to 35% over the next ten-year period.[179] In addition to continuing its ongoing efforts, we modified this Condition to also require Washington Gas to appoint a company-wide team tasked with ensuring that the purpose of this Condition becomes engrained within Washington Gas's business culture.

Additionally, we are requiring AltaGas to establish a "Certified Diverse Supplier Fund," intended to provide access to capital for Maryland certified diverse suppliers interested in working in the gas industry. AltaGas shall initially finance this fund the same as the AltaGas First Nations Development Fund,[180] not to be recovered through Washington Gas rates.[181]

This Condition also requires the development of certain programs in Maryland related to supporting certified diverse suppliers, such as the New Graduate Program to Maryland graduates. AltaGas already has such a program in other jurisdictions.

4. Most Favored Nation Clause

Because WGL Holdings operates utilities outside of Maryland, the District of Columbia must also approve this transaction before it may close. As is common in multi-

[179] Condition 8 of Appendix A.
[180] *See* Tr. at 179-81.
[181] Condition 9 of Appendix A. The Commission created this Condition to reflect the importance of this public policy.

jurisdictional mergers, the Applicants have agreed to a "Most Favored Nation" clause, which ensures that Maryland will receive at least the level of benefits negotiated within D.C. If this clause is invoked, Maryland could receive more benefits than we are currently reviewing, but our review has been and remains limited only to those Maryland benefits the Applicants have offered. OPC objects to the manner in which we should commit to comparing benefits between the two jurisdictions. The Applicants propose to compare jurisdictional benefits based upon the size their respective rate base, whereas OPC contends that a per-customer comparison is more appropriate.[182]

We are not inclined to second-guess the proposed conditions under which this provision might apply, just as we ascribe to it no "benefits." If the provision is invoked, it will be invoked after these proceedings, which the Commission is limiting to the Settlement Agreement before it.

C. No Harm

1. Ring Fencing

In Case No. 9173, the Commission first considered what the language of § 6-105 required an Application to establish to merit approval. In that case, Constellation Energy Group ("CEG") proposed to sell 49.99% of its nuclear assets to Electricitie de France ("EDF"). The origins of that case largely arose from CEG's near bankruptcy as a result of relatively risky unregulated trading. Had CEG declared bankruptcy, it would have done so without any ring-fencing in place to protect Baltimore Gas & Electric ("BGE"). During the course of those proceedings, the Applicants proposed an extensive series of

182 Arndt post-settlement testimony at 11-12.

ring-fencing measures that became referred to as the "Gold Standard" of utility ring-fencing.[183]

The parties opposing this merger have compared AltaGas with Exelon to conclude that AltaGas lacks the same financial stability and credit. However, in our first order requiring ring-fencing of a Maryland public service company, we did so even as the parent company had recently flirted with bankruptcy. And in EDF/CEG, we did not simply conclude that ring-fencing BGE was preferable to the absence thereof. We specifically found that "[t]hese conditions not only protect BGE against financial catastrophe at the hands of its parents, but will *strengthen* BGE in ways that will yield more for ratepayers than any rebate".[184]

Since EDF/CEG, we have tightened even those strict ring-fencing measures, culminating in our decision to approve Exelon's purchase of Pepco Holdings, Inc. ("PHI") subject to what we then termed the "platinum standard."[185] In addition to the ring-fencing measures we previously required, we also required additional protections, to which the Applicants agreed.[186] In that case, as with this one, OPC contended that even with ring-fencing, customers faced greater risks than they faced pre-merger.[187] In that case, as in this one, the record reflects no persuasive evidence that the robust ring-fencing measures we impose as a condition to approval would fail to protect Washington Gas in

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[183] These ring-fencing measures, with certain changes, are mirrored in the present case in Conditions 30-41.

[184] Case No. 9173; Order No. 82986 (Oct. 30, 2009). Additionally, in Exelon/PHI, the hearing testimony addressed whether Exelon was overly extended in its nuclear assets in light of the decline in alternative energy prices. Nevertheless, the Commission concluded that ring-fencing sufficiently protected PHI's utilities from this threat.

[185] Case No. 9361; Order No. 86990 (May 15, 2015) at 44. Staff witness Lubow, identified as providing "management, finance, regulatory, and accounting" expert testimony, agreed during the hearing that the ring fencing conditions proposed in this proceeding are essentially the same as the "platinum standard" provisions in the Exelon-PHI merger, which the Commission found sufficient to protect against the impacts of bankruptcy. Tr. at 3096-97.

[186] *Id at 45.*

[187] OPC March 3, 2015 Initial Brief at 17.

the event of a financial hardship suffered by its new parent company. In this order, we also extend the required bankruptcy opinion letter (an opinion letter that we have always required merger applicants to obtain) to include provisions addressing Canadian bankruptcy law.[188] Washington Gas's ratepayers must be legally protected even if AltaGas files for bankruptcy in Canada.

The remaining objecting parties have repeatedly asserted that AltaGas's financial situation is such that no ring-fencing, however tight, can alter the fact that merger approval increases the possibility of future harm to Washington Gas. Although Washington Gas is currently operating without any ring-fencing from WGL Holdings, they argue that the present state of affairs is less risky than the one being proposed.

They lay out several objections to AltaGas's financial situation that, they contend, cannot be altered by any conditions the Commission may impose. These objections include:

> 1) the Settlement Agreement simply provides benefits to the settling parties, with the ratepayers – the proper subject of a § 6-105 analysis – being relegated to the sidelines.
>
> 2) AltaGas's weak earnings history and return on equity throughout its operating history;
>
> 3) AltaGas's policy of paying dividends in excess of earnings;
>
> 4) AltaGas's unacceptable level of debt;
>
> 5) AltaGas's rejection of Generally Accepted Accounting Principles ("GAAP");[189]
>
> 6) A likely drop in the credit rating of WGL and Washington Gas.

[188] Condition 37.
[189] OPC post-settlement brief at 4-5.

We conclude that objection number three has been squarely addressed by the Applicants' commitment to refrain from issuing dividends if Washington Gas's equity-to-debt ratio is below 48%. Objection number five is not the basis for opposing a merger under § 6-105 so long as the finances of the potential new parent company are sufficient to evaluate the potential for possible harm to the regulated subsidiary. We will turn our attention to the crux of the objections – whether AltaGas's financial situation is sufficiently weak that we do not trust even the best of ring-fencing to negate harm to Washington Gas should things come to a head.

OPC and the dissent point out that AltaGas went to great lengths to finance this acquisition, including reliance on "contingent subscription receipts." OPC contends this indicates a lack of creditworthiness that ring-fencing cannot cure.[190] OPC points to a decline in AltaGas's stock price and the testimony of several witnesses to the effect that AltaGas's stock is riskier than WGL's.

We understand that approving this Merger, or any merger, carries certain risks. AltaGas has proposed a good-faith commitment to hold Washington Gas harmless in the event of a reduction in its credit rating as a result of this Merger. OPC objects that establishing a connection between a reduced credit rating and the Merger may be difficult, depending on circumstances. We have addressed that by explicitly requiring that the burden of proof remains on the Applicants. No other Maryland public service company currently has such a commitment from its parent, and AltaGas's willingness to be the first should not be so easily dismissed.

[190] The dissent agrees with OPC on this issue, distinguishing a protection from bankruptcy (which ring-fencing can prevent) from a need for solvency that a desperate parent company may seek to extract from a subsidiary. In fact, the protective provisions we have imposed can prevent both types of harm.

The dissent argues that a likely credit drop is a harm of the transaction, however the record demonstrates that WGL and Washington Gas had a negative outlook even without the transaction due to WGL's aggressive plans to expand its non-regulated business, increasing capital expenditures, and concerns about reliance on debt leverage to finance growth.[191]

AltaGas's stock price is simply not our concern. It reflects the market's view of its entire business pasted against the industry in which it operates. Whether its stock is under or over-valued is simply outside our purview.

Similarly, OPC objects that the prohibition on issuing extraordinary dividends is only limited to three years, arguing that AltaGas could simply defer these dividends for three years.[192] WGL Holdings currently has no limitation on when it issues extraordinary dividends. Consequently, Washington Gas will have more protection following the merger than it does now.

The Commission Staff and the dissent express concern that AltaGas's financial condition will result in AltaGas using Washington Gas's profits to finance its operations and future acquisitions to the detriment of the company and its ratepayers. We have addressed this concern in Conditions 11 and 12, which assures that AltaGas will devote resources necessary to maintain service and reliability, and provides specific access to capital through the year 2021 and annual reporting addressing capital expenditures for an additional 10 years.

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[191] Lapson Direct at 16-17.
[192] OPC post-settlement brief at 8-9.

Therefore, the Conditions that we impose upon AltaGas are the most strict we have yet imposed and probably are as or more strict than any utility in the country.[193] Therefore, with the acceptance of these Conditions, we conclude that the Applicants have successfully established that "no harm" under section 6-105 will result from approval of this transaction.

2. Maintaining Washington Gas Liquidity

PUA § 6-105(g)(2)(ii) requires the Commission to analyze "the potential impact of the acquisition on continuing investment needs for the maintenance of utility services, plant and related structure." Similar to prior cases under § 6-105, the Applicants have pledged that Washington Gas will not issue any dividends to its parent company if its bond rating falls below investment grade for any of the three credit agencies (to which we have added a fourth) or its equity level falls below a minimum level (48%).[194] Additionally, Washington Gas will not pay dividends outside of the ordinary course of business for a period of three years after the Merger Closing.[195]

We accept these Conditions as satisfying this statutory requirement. We have added an additional requirement that AltaGas shall report to the Commission if any of the Applicants are put on a negative outlook or are downgraded below current bond ratings by any of the major credit ratings. Washington Gas shall also describe the measures it intends to take to restore its investment grade rating within a certain time frame.[196]

[193] We do not share the dissent's concern that the ring fencing provisions prevent only harm resulting from bankruptcy. Several of the ring fencing provisions address and mitigate potential harms prior to the filing of any bankruptcy, such as Condition 35 (requiring an average equity ratio of not less than 48%); Condition 39 and 40 (restricting dividend payments); and Condition 41 (requiring that AltaGas hold harmless Washington Gas customers from any adverse rate impacts due to an increase in Washington Gas's cost of debt that are caused by the Merger).
[194] Conditions 39 and 40. Reed Direct at 40.
[195] Condition 39.
[196] Condition 38.

3. Protecting Washington Gas's Credit Rating

In the initial Application, the Applicants committed that Washington Gas customers would be held harmless for a period of five years from adverse rate impacts due to any increase in the cost of debt for Washington Gas caused by the Merger. The Applicants maintained that this provision eliminated the risk that Washington Gas ratepayers would pay increased rates as a result of any credit-rating agency's downgrade of Washington Gas in the five years following Merger Close. As a result of questions from the Commission during the hearings on the initial Application, however, AltaGas agreed to extend the hold harmless provision from five years to eight years.[197] Additionally, the Applicants clarified that Washington Gas customers would be held harmless not only for a period of eight years from the adverse rate impact of any increased cost of debt resulting from the merger, but also for the life of any debt securities issued during that eight-year period.[198]

Nevertheless, some parties criticized the hold harmless provision, arguing that the time constraint could still impose harm on customers. Accordingly, during the hearings on the Settlement Agreement, the Applicants proposed further strengthening the commitment by removing any time constraint. The new Condition provides without reservation that "customers of Washington Gas are held harmless from adverse rate impacts due to an increase in Washington Gas's cost of debt that is caused by the Merger with AltaGas, or the ongoing affiliation with AltaGas and its affiliates after the Merger."[199] Removing any doubt about intentions, the Applicants stated in their brief: "By eliminating any exception language, and by eliminating any time limitation on the

[197] *See* Tr. 684:7-21 and 687:7-12 (Cmr. O'Donnell —O'Brien).
[198] Joint Applicants' Initial Brief at 28.
[199] Condition 41.

commitment, there is now no doubt that [the] 'entire burden is on the company full stop' to hold customers harmless."[200]

We find that this Condition, as revised by this Order,[201] provides sufficient protection to prevent harm to Washington Gas customers resulting from the company's affiliation with AltaGas after the merger.[202] To the extent Washington Gas's cost of debt is increased as a result of this merger, the company's ratepayers will be held harmless. That protection is not limited to five years or even eight years, but continues indefinitely. Additionally, as conceded by the Applicants, it is always within the Commission's authority to consider the appropriateness of the cost of capital in future general rate cases.[203]

4. Proposed Capital Structure

PUA § 6-105(g)(2)(iii) requires the Commission to consider "The proposed capital structure that will result from the acquisition, including allocation of earnings from the public service company." Washington Gas has pledged to maintain its own separate debt and preferred stock, if any. It will also maintain its own debt securities and credit ratings in its debt securities. We have added to this Condition that Washington Gas will maintain a separate capital structure to finance the activities and operations of

[200] Brief at 28, citing Tr. 2744:3-7 (Cmr. O'Donnell – Reed).
[201] In response to concerns expressed by certain parties and the dissent, we have revised the wording of this Condition to clarify that the burden is on Washington Gas to demonstrate that its customers are held harmless. Washington Gas ratepayers will not pay for any increase in the cost of debt caused by the merger. In future rate case proceedings, if the Commission determines that the cost of debt has increased as a result of the merger, the Commission may require that the cost of debt should be calculated based on Washington Gas's current bond rating. Nothing in this Order limits the Commission's normal ratemaking authority over Washington Gas.
[202] We additionally observe that the record shows Washington Gas's credit rating vis-à-vis AltaGas will be very similar to that of BGE and Exelon, after their merger. See Tr. at 685 (O'Brien) ("post-merger Washington Gas the utility … will be at an A minus credit rating. That is the same, for instance, as BGE. The parent company [AltaGas] will be triple B, which is the same as Exelon."
[203] Joint Applicants' Initial Brief at 29.

Washington Gas and maintain a 12-month rolling average equity ratio of no less than 48% and no more than 55%, barring future Commission orders to the contrary.[204]

5. Affiliate protections

PUA § 6-105(g)(2)(vii) requires the Commission to analyze "affiliate and cross-subsidization issues." To comply with this requirement, AltaGas has agreed to permit the Commission and OPC to "examine the accounting records of AltaGas and its affiliates that are the basis for charges to Washington Gas's operations in Maryland to determine the reasonableness of allocation factors used by AltaGas to assign those costs and amounts subject to allocation and direct charges."[205]

AltaGas similarly commits to comply with the statutes, regulations and orders applicable to Washington Gas and its affiliates regarding affiliate transactions, and we condition this approval upon this compliance.[206] Washington Gas further commits to hold itself out as a separate entity and conduct business in its own name, refraining from using "trademarks or service marks" of AltaGas.[207]

Washington Gas commits to providing a "side-by-side" comparison by function of corporate and shared services incurred by Washington Gas pre-merger and those same services for the five years post-merger. We do not accept AltaGas's preference to use a "hypothetical" for purposes of this comparison. Instead, we have concluded that this Condition refers to calendar year 2016.

PUA § 6-105(g)(2)(ix) requires that we consider "the use or pledge of utility assets for the benefit of an affiliate." Washington Gas has explicitly committed

[204] Condition 35.
[205] Condition 25 of Appendix A.
[206] Condition 25 of Appendix A; *See also* Exelon/PHI at 47.
[207] Condition 27 of Appendix A.

not to impose any mortgage or other lien on any of its assets, and we consider this Condition sufficient to satisfy this statutory provision.[208]

6. Customer Service Quality Metrics

AltaGas will continue to devote necessary resources to maintain current service quality and will otherwise ensure that "Washington Gas will maintain safety and reliability standards and policies that are substantially comparable to, or better than, those standards maintained by Washington Gas at Merger Closing.[209]

In order to further protect Washington Gas customers from a decline in customer service quality, Washington Gas has committed to filing "Customer Service Quality Reports" on a quarterly basis.[210] These reports should reflect the results of a root-cause analysis and provide us with a measurable plan to improve Washington Gas's customer service scores. Specifically, "[t]he report should review customer metric data from the past three years from merger close and, shall compare AltaGas / Washington Gas's performance to industry standards. AltaGas / Washington Gas shall file this analysis with the Commission for further review and action no later than six months after merger closing." These reports will allow us to review objective data as to whether customer service within Washington Gas's service territory is in fact improving post-merger.

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[208] Condition 31 of Appendix A.
[209] Condition 11 of Appendix A.
[210] Condition 11F of Appendix A.

7. Treatment of Customers Receiving Deregulated Commodity

The Applicants have also agreed to a provision to require WGES to continue to honor the terms and conditions within its deregulated contracts post-merger.[211] Specifically, that Condition states:

Treatment of Customers Receiving Deregulated Commodity.

a. As a condition of acquiring the license currently held by Washington Gas Light Energy (WGLE), AltaGas shall provide to all WGLE Maryland residential, small business customers and the Office of People's Counsel, a written Notice, which shall also be filed with the Commission, that;

i. Describes the transaction and AltaGas acquisition of WGLE;

ii. Provides customer service contact information for WGLE after merger close, and, if it will not change, a statement stating so; and

iii. Confirms that the terms and conditions of the customer's contract in effect at the time of merger close shall remain the same for the remainder of the contract term.

b. Washington Gas Energy Services shall honor all existing contracts with Maryland customers of all rate classes.[212]

8. NAFTA Provision

OPC (and others) have expressed concern that AltaGas, as a Canadian company, might employ (or threaten to employ) a NAFTA-created international arbitration process referred to as the Investor State Dispute Settlement ("ISDS"). This process permits private companies to "sue" governments and potentially undermine the government's regulatory authority.[213]

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[211] *See* Tr. at 2543.
[212] Condition 29 of Appendix A.
[213] OPC Post-Settlement Brief at 10-13 (including references to several witnesses who did not understand the original language of the NAFTA Commitment).

As a result of the concerns expressed during post-settlement hearings, we changed the language of Conditions 20-21 to read:

> 20. Notwithstanding any other provisions of these conditions, AltaGas, Washington Gas, and WGL recognize that the State of Maryland and the Government of the United States retain the full right to enact *bona fide* laws and regulations in relation to the production and distribution of natural gas and other carbon-based energy sources. Nothing in these conditions or the Commission's orders restrict or alter these rights, or creates or implies any limitation on the State of Maryland or its agencies, or on the Government of the United States and its agencies, with respect to future measures in this regard. This includes measures to address climate change and other public interest issues such as air quality.
>
> 21. AltaGas, Washington Gas, and WGL expressly acknowledge that the Commission, by approving the Merger, is not creating any special expectations to induce AltaGas, as an entity covered by North American Free Trade Agreement ("NAFTA"), to close the Merger.

In response, OPC witness Dr. Mann proposed a series of additions to this language, all of which require AltaGas to waive its rights under Chapter 11 of NAFTA.[214] AltaGas refused to do so, explaining that it should not have to waive its rights in order to close this transaction any more than WGL Holdings was required to waive its legal rights when it became the holding company for Washington Gas.[215]

We agree with the Applicants that this issue appears to be highly unlikely. As Witness Reed testified, there have been approximately 16 acquisitions of U.S. utilities by Canadian companies, and the NAFTA issue was never raised, nor did any NAFTA issues arise from those transactions.[216]

A review of the record reveals that AltaGas will acquire no additional substantive rights as a result of this Merger, only additional procedural rights. AltaGas's access to the ISDS is no different than Washington Gas making use of a United States Federal

[214] OPC Post-Settlement Brief at 14-16 (citing to Mann Post-Settlement Testimony at 29, 36, 42, 59-60).
[215] Commission Exhibit 18 (Citing to Applicants' Response to Bench Data Request 2 at pg. 2).
[216] Reed Rebuttal Testimony at 49 and Ex. JJR-6.

Court. Moreover, AltaGas specifically acknowledged that it knew of the potential for zero carbon legislation by the Maryland General Assembly and assumes the risk of the implementation of such legislation, therefore addressing OPC's most likely scenario regarding a NAFTA claim.[217] Finally, AltaGas continues to acknowledge this Commission's authority over disputes regarding WGL.[218] We therefore conclude that the current language in Conditions 20 and 21 sufficiently resolves any issue that ever may have existed. That language clearly removes any doubt that no government agency, including the Commission, induced AltaGas to enter into this transaction. This renders OPC's continued hypothetical statements of possible harm too unlikely to require additional action by the Commission prior to approval.

9. Cybersecurity

As a result of concerns regarding possible cybersecurity issues that may occur during the transition, we require Washington Gas to continue to operate its cybersecurity program on a stand-alone basis. The details of this Condition are set forth in Condition 50. We also construe this Condition as assuring that "no harm" occurs to customers as a result of this Merger.

10. Acquisition Premium

In the Exelon-PHI merger proceeding, OPC raised the novel theory that ratepayers should be entitled to a share of the acquisition premium paid by the acquiring company (Exelon Corporation) to purchase the regulated company (Potomac Electric Power Company, or "Pepco"). The Commission declined to accept OPC's arguments in

[217] *See* Tr. at 2558-59 (O'Brien), acknowledging on behalf of AltaGas that zero carbon legislation is something that could trigger a Chapter 11 filing under NAFTA and is something the company has already taken into account.
[218] *See* Tr. at 2512 (O'Brien), conceding that "we submit to the jurisdiction of this Commission. We fully recognize that this Commission and the Maryland legislature and Governor have authority over environmental laws and rate-making and all of the things that are embodied in that."

that proceeding, and the Maryland Court of Special Appeals rejected OPC's arguments on appeal.[219] In the present case, OPC has reiterated its arguments, claiming that the "extreme disparity between shareholder benefits flowing from the acquisition premium, and the rate credits to Washington Gas customers" is contrary to the public interest, which requires that AltaGas "make a payment equivalent to this amount to Washington's Gas's Maryland customers or to causes that will benefit the Maryland public."[220] OPC witness Hempling further argued that the merger "is a sale of public franchise for private gain" that necessitates a contribution to ratepayers.[221] Finally, OPC argued that the size of the acquisition premium puts financial stress on AltaGas that could cause harm to ratepayers.

We again decline to accept OPC's arguments on this matter. Pursuant to PUA § 6-105, we are required to consider eleven specified factors in reviewing an acquisition. However, the acquisition premium is not an enumerated factor, indicating that the General Assembly did not intend that the Commission review the acquisition premium for reasonableness or as a source of additional customer benefits. Of course, § 6-105(g)(2)(xii) authorizes us to consider "any other issue the Commission considers relevant to the assessment of acquisition in relation to the public interest, convenience, and necessity." Nevertheless, we will not disturb our prior holding that the acquisition premium represents a negotiated, private transfer of funds between shareholders and is not properly the source of funds to obtain further customer benefits. This transaction is

[219] *Md. Office of People's Counsel v. Md. Pub. Serv. Com'n*, No. 2547, Sept. Term, 2015, 2017 WL 382886 (Jan. 27, 2017). OPC's further appeal to the Maryland Court of Appeals has not yet been decided.
[220] OPC Supplemental Brief at 3, 20.
[221] Hempling Direct at 8.

not the sale of the franchise – the Washington Gas franchise remains where it always has been, with Washington Gas.

We are not alone in so finding. Despite the fact that premiums are paid in virtually every acquisition of a publicly-traded company, no state public utility commission has accepted OPC's acquisition premium theory.[222] Moreover, OPC's concerns are allayed because the Joint Applicants have committed to not passing through in rates the acquisition premium, thereby ensuring that the acquisition premium does not impact customers' rates.[223] The Commission retains jurisdiction over this matter to ensure that this condition is fulfilled. Finally, to the extent OPC argues that the acquisition premium places financial stress on AltaGas that could impact Washington Gas customers, the ring fencing conditions discussed throughout this Order prevent customers from being harmed.

D. Additional Conditions

1. Jurisdictional Issues

Pursuant to PUA § 6-105(g)(2)(x), we must consider "jurisdictional and choice-of-law issues." We have done so and are satisfied that the Applicants recognize and accept Commission jurisdiction. In addition to the Applicants, their affiliates also accept Commission jurisdiction on matters related to the Merger and its enforcement, as well as any transactions between Washington Gas and AltaGas affiliates.[224]

[222] Reed Rebuttal at 66, 72.
[223] Condition 43.
[224] This jurisdictional acceptance is memorialized in Condition 19 of Appendix A.

2. Effect on Employment

PUA § 6-105(g)(2)(iv) requires us to consider "the potential effects on employment by the public service company." According to Applicants, AltaGas expects this merger to spur growth in AltaGas's utility and non-utility businesses, leading to higher levels of employment in Maryland. In response to Commissioner O'Donnell's urging,[225] Washington Gas and its affiliates committed to employing 65 additional employees five years after Merger Closing.[226] As in prior cases under this statutory provision, Washington Gas has also committed that it will ensure no net reduction in employment due to involuntary attrition for two years after the Merger Closing and it will honor all existing collective bargaining agreements.[227] Finally, Washington Gas has committed to spend $1.4 million over two years to promote workforce development within Washington Gas territory. These funds will not be recoverable in rates.[228]

V. CONCLUSION

For the reasons set forth above, we find that the Merger satisfies the three-part test of PUA § 6-105(g)(i) and therefore approve it subject to the Conditions set forth in Appendix A, which we consider merger conditions pursuant to PUA § 6-105(g)(3)(iii) and therefore not subject to modification without Commission approval.

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[225] Tr. 1411.
[226] Condition 24 of Appendix A.
[227] Conditions 22 and 23 of Appendix A.
[228] Tr. 1399-1400 (Gutermuth).

IT IS THEREFORE, this 4th day of April, 2018 by the Public Service Commission of Maryland,

ORDERED: (1) That the Application for approval of the Merger submitted by AltaGas, Ltd., WGL Holdings, Inc. and Washington Gas Light Company in this proceeding is hereby granted, subject to the Conditions and requirements contained in this Order and Appendix A;

(2) That AltaGas, Ltd., WGL Holdings, Inc. and Washington Gas Light Company shall notify the Commission in writing, no later than April 16, 2018, whether they accept the modified Conditions attached to this Order as Appendix A; and

(3) That AltaGas, Ltd., WGL Holdings, Inc. and Washington Gas Light Company remain subject to the Commission's jurisdiction for enforcement of the provisions of this Order.

Michael T. Richard

Anthony J. O'Donnell

Odogwu Obi Linton

Mindy L. Herman
Commissioners

APPENDIX A – Conditions

Case No. 9449

April 4, 2018

MERGER CONDITIONS

DEFINED TERMS:

"AltaGas" means AltaGas Ltd.

"ASUS" means AltaGas Services (U.S.) Inc.

"AUHUS" means AltaGas Utility Holdings (U.S.) Inc.

"Commission" means the Maryland Public Service Commission.

"Greater Washington, D.C. metropolitan area" includes each county, city or township in which Washington Gas is authorized to provide natural gas distribution service.

"Independent Director" means an individual who satisfies the New York Stock Exchange's ("NYSE") definition of "independent" and does not have any other relationship with AltaGas or any of its affiliates that a majority of either the Washington Gas board or the AltaGas board determines would impact the independence of the individual from the management of AltaGas and its affiliates.

"Low-income customers" are those customers whose gross annual household income is at or below 200 percent of the federal poverty level.

"MEA" means the Maryland Energy Administration.

"Merger" means the merger among AltaGas, Wrangler, Inc. (an indirect, wholly-owned subsidiary of AltaGas), and WGL, which shall have the effect of WGL becoming an indirect subsidiary of AltaGas.

"Merger Close" or "Merger Closing" means the date the Merger is consummated.

"Moderate-income customers" are those customers whose gross annual household income is at or below 80 percent of the area median income as most recently determined by the U.S. Department of Housing and Urban Development.

"Primary office" means the business location where the individual is expected to spend the majority of office hours each year, recognizing that the individual's duties will often require extensive business travel, including to other business locations.

"Washington Gas" means Washington Gas Light Company.

"WGL" means WGL Holdings, Inc.

DIRECT CUSTOMER & PUBLIC INTEREST BENEFITS

1. AltaGas will fund $30.5 million for a one-time rate credit to be distributed among all Maryland customer classes and allocated in accordance with each class's cumulative non-gas revenues as determined by the Commission in Washington Gas's last base rate case. This results in a $50 rate credit for each Washington Gas residential heating customer. The credit will be provided within 60 days after the Merger Closing based on active customer accounts as of the billing cycle commencing 30 days after the Merger Closing. No portion of the rate credit will be recovered in utility rates.

2. AltaGas will provide $22,880,000 in funding to support county programs. The counties receiving monetary benefits pursuant to the Merger Commitments shall report annually regarding their existing funding levels on programs being supplemented by Merger Commitments as well as how the supplemental program dollars have been spent each year. Merger Commitment funds should not merely supplant county tax dollars that would otherwise have been spent but should be incremental to existing program funding. The funding shall be disbursed as follows:

a. Within 90 days after Merger Close, AltaGas will provide $12,130,000 in funding to support Montgomery County energy distribution-related customer or educational programs (such as: weatherization, energy efficiency, safety, renewable energy or workforce or educational development). No portion of the program funding will be recovered in utility rates.

   i. Montgomery County shall use workforce focused funds to foster an array of community partnerships to drive job creation in the areas of energy-efficiency, maintenance and expansion of the natural gas system, future utility jobs, renewable energy, and Science, Technology, Engineering and Math ("STEM") fields.

   ii. Montgomery County will use energy efficiency and weatherization funding to help close the investment gap to implementing long-term energy savings measures. Specifically, programs that have an emphasis on lowering the energy costs of public facilities, businesses, multi-family buildings and low-income residents. Particularly investments in measures that have longer term payback but improve the overall condition, health and function of buildings.

   iii. Montgomery County will endeavor to direct at least 20% of the funds to benefit low- and moderate-income residents in both single- and multifamily communities with an emphasis on reducing gas utility bills. Montgomery County shall work with low and affordable housing stakeholders to develop multifamily specific programming.

iv. Montgomery County will endeavor to build on the collective efforts of the Commission, County and State to create programs that provide long-term benefits to gas utility customers.

b. Within 90 days after Merger Close, AltaGas will provide $10,750,000 in funding to support Prince George's County's Transforming Neighborhoods Initiative (TNI) Clean Energy Program, ENERGY STAR Certification & Green Leasing Program, and any other Prince George's County energy distribution-related customer or educational programs (such as: weatherization, energy efficiency, safety, and/or workforce or educational development). No portion of the program funding will be recovered in utility rates.

i. At least 20% of the dollars provided to support the above programs will be directed to supporting low- and moderate-income customers, with an emphasis on reducing gas utility bills in low- and moderate-income homes and in multifamily housing.

3. AltaGas will provide $1.5 million of supplemental funding over the five years following Merger Close (or until expended) to the Washington Area Fuel Fund (WAFF) to provide emergency gas heating utility bill assistance to Washington Gas qualifying Low-income customers and Moderate-income customers who have exhausted low-income benefits or who do not qualify for low-income benefits. At least $595,000 of these contributions will be earmarked for assistance to qualifying customers in Maryland. No portion of these contributions will be recovered in Washington Gas's Maryland utility rates.

4. AltaGas shall, within five years after Merger Close, develop or cause to be developed 5 megawatts (MW) of either electric grid energy storage, Tier 1 renewable resources, combined heat and power resources, or other distributed generation in Maryland, as set forth below. If AltaGas or one of its affiliates develops the project, the construction of the project shall be competitively bid. AltaGas may retain the renewable energy certificates ("RECs") and tax attributes for the Tier 1 resources. The upfront or long-term cost of any project selected by the Counties and AltaGas shall be capped at the lesser of the market value of energy delivered by the systems at the time of contract signing or actual project capital and financing costs. AltaGas will not seek to recover the costs of these projects through Washington Gas's utility rates.

a. AltaGas will coordinate with Montgomery County to develop or cause to be developed at least 2.5 MW of either electric grid energy storage, Tier 1 renewable resources, fuel cells, combined heat and power resources, campus microgrids, or other associated technologies or other distributed generation for Montgomery County buildings or public facilities.

b. AltaGas will develop or cause to be developed at least 2.5 MW of either electric grid energy storage, Tier 1 renewable resources, combined heat and power resources, or other distributed generation to be located in Prince George's County, including at government buildings (the "Prince George's County Clean Energy Projects"). AltaGas and Prince George's County will coordinate to identify, within one year after Merger Close, the type and locations for the construction of the Prince George's County Clean Energy Projects. AltaGas and Prince George's County will jointly participate in the permitting and interconnection processes of the Prince George's County Clean Energy Projects. AltaGas will use commercially reasonable efforts to complete the construction and bring into operation the Prince George's County Clean Energy Projects within six years after Merger Close.

5. AltaGas will provide $450,000 to fund a study to assess the development of renewable (bio) gas facilities in the Greater Washington, D.C. metropolitan area. The study will assess the potential environmental benefits of repurposing locally sourced waste streams into pipeline quality renewable gas, compressed natural gas and/or liquefied natural gas that can be used for carbon neutral vehicle fueling and onsite energy production. The study will evaluate the economic viability, identify operating challenges and solutions, and offer recommendations relating to regulatory and market approaches that can facilitate the utilization of renewable sources to support the achievement of local, state, and regional climate and energy plans. This study will be a single study funded by AltaGas with respect to all of the Washington Gas service territories and will be commenced within one year after Merger Close. Neither AltaGas nor any AltaGas affiliate will perform the study. AltaGas will not seek to recover the costs of this study through Washington Gas's utility rates.

6. AltaGas will fund a new public safety program at Washington Gas focused on preventing third party excavation damages. This will be accomplished by increasing staffing and resources in two primary areas: A) Excavator Engagement and Training; and B) Customer and Community Engagement, Education and Outreach.

A. Excavator Engagement and Training: AltaGas will provide Washington Gas with
$160,000 in annual funding for the five (5) year period commencing after Merger Closing for Washington Gas to add one Damage Prevention Trainer/Educator in Maryland. AltaGas will not seek to recover the costs of this funding through Washington Gas's utility rates.

B. Customer and Community Engagement, Education and Outreach: AltaGas will provide $350,000 in incremental funding to Washington Gas, recovery of which will not be sought from Washington Gas's customers, over and above Washington Gas's current expenditures for educational and damage prevention awareness in accordance with applicable regulations, in order to increase Washington Gas's direct mailing efforts regarding educational and damage prevention awareness materials in its service territories. The $350,000 of incremental funding is the aggregate amount covering all three of the Washington Gas jurisdictions, including Maryland. In addition to mailing materials and bill inserts, Washington Gas will implement events and programs specifically intended to create greater awareness of the dangers of unsafe digging, and greater compliance with the one-call requirements. Washington Gas will also seek to engage a growing population of Spanish speaking residents in its communities with bilingual messaging. Washington Gas will consult with interested stakeholders prior to implementation of the above programs. At the conclusion of the five-year period after Merger Close, Washington Gas shall file a report with the Commission demonstrating the program's impact on the incidence of third party excavation damages. The $350,000 in incremental funding will be provided by AltaGas as a single contribution to Washington Gas within 30 days after Merger Close.

7. In order to promote economic development in the State of Maryland, job creation and the expansion of natural gas infrastructure to underserved parts of Maryland, AltaGas will deposit $30,320,000 in a fund (the "Maryland Gas Expansion Fund") to be administered by the MEA. AltaGas shall deposit such funds into the Maryland Gas Expansion Fund no later than four months from Merger Close. MEA shall use such funds in its discretion for the purpose of promoting the expansion of natural gas infrastructure to serve businesses, residents, industrial enterprises, and utility generation facilities in Maryland. At least a majority of these funds will be spent in Washington Gas's service territory. MEA shall file on an annual basis with the Commission a public description of the project funding and other disbursements MEA has made from the Maryland Gas Expansion Fund for the purpose of promoting the expansion of natural gas service in Maryland. MEA's use of such funds may include, but is not limited to, grants matching expenditures Local Distribution Companies pledge for the purpose of building natural gas distribution infrastructure. AltaGas will not seek to recover the costs of the $30.32 million through Washington Gas's utility rates. This fund is intended to kick-start gas expansion efforts throughout the State of Maryland.

a. MEA shall make best efforts to engage with and include Montgomery County, Prince George's County, Frederick County, St. Mary's County, Calvert County and Charles County and any municipalities within those counties, as well as Washington Gas and AltaGas, in the determination and selection of project funding and other disbursements from the Maryland Gas Expansion Fund within those respective counties and the Washington Gas service territory. Likewise, MEA shall make the same effort to engage with other utilities in Maryland and any other Maryland County or any other Maryland municipality in the determination and selection of project funding and other disbursements from the Maryland Gas Expansion Funds used outside of Washington Gas's service territory.

b. At least $4.6 million of the MEA funds provided by AltaGas pursuant to this section shall be deployed in Calvert, Charles, Frederick and St. Mary's counties.

8. Washington Gas will continue its supplier diversity efforts as outlined in the Memoranda of Understanding with the Commission, and will commit to an aspirational goal to increase the company's share of non-gas spending with diverse suppliers to 35% over the next ten-year period. Within 180 days after Merger Close, Washington Gas shall file a plan with the Commission detailing its planned actions including a timeline to achieve the 35% goal, and thereafter provide an update in its Annual Plan in Public Conference 16, or in a separate plan if the Annual Plan is not required, to annually inform the Commission of its progress toward reaching this goal. Washington Gas shall also appoint a company-wide team tasked with ensuring that both supplier and workforce diversity are fundamental parts of the business culture in the merged company and after one year and three years from merger close file a report with the Commission summarizing the team's progress.

9. AltaGas / WGL shall expand and develop several specialized programs to help certified diverse businesses. Specifically, AltaGas / WGL shall:

a. Develop a specialized program to work through their company's internal procurement system to become approved suppliers. The Company shall report on its progress at the Commission's Annual PC16 Supplier Diversity Hearing;

b. Expand its New Graduate Program to graduates of Maryland institutions program. This Program shall operate for five years in Maryland and shall be coordinated with interested organizations. AltaGas shall file a Report with the Commission, which may be subject to additional review, summarizing the program's progress one year and three years after merger close; and

c. Adapt and offer a program to provide access to capital for Maryland certified diverse suppliers interested in working in the gas industry, inspired by its First Nations Development Fund. The program shall be financed initially the same as the AltaGas First Nations Development Fund, none of which shall be recoverable in rates. The program shall be administered by AltaGas, with consultation from the Commission Technical Staff and the Governor's Office of Small, Minority, & Women Business Affairs. AltaGas shall file a Report with the Commission, which may be subject to additional review, summarizing the program's progress one year and three years after merger close.

10. AltaGas, Washington Gas, and their affiliates will, in aggregate, during the ten-year period following Merger Close, provide at least $1.2 million in charitable contributions and traditional local community support per year in the Greater Washington, D.C. metropolitan area, which represents an approximately 20% increase over the highest of any of the past five fiscal years for WGL and its affiliates. In order to ensure that Maryland residents benefit from the charitable contributions described above, the Applicants will earmark at least $475,000 of the charitable contributions and traditional local community support per year to charities serving Maryland residents (including charities that may not be based in Maryland but that serve Maryland residents). The contributions made shall be cash contributions, not "in-kind" contributions. This commitment is separate from and in addition to any other contributions made to charitable organizations under other Merger commitments. AltaGas, Washington Gas, and their affiliates shall provide information regarding the contributions that benefit Prince George's County and Montgomery County to each County and the Commission on an annual basis for a period of ten-years following Merger Close.

10A. After Merger Close, AltaGas and Washington Gas will work with MEA to develop additional geographic gas expansion proposals for the Commission's review. AltaGas, Washington Gas, and MEA will conduct meetings no less than quarterly dedicated solely to the topic of gas expansion. Such meetings shall be open to all stakeholders. One topic to be introduced at the meetings shall be whether and/or how to modify the Washington Gas Tariff GSP 14 to broaden the number of potentially qualifying gas expansion projects. The parties may file with the Commission a proposal to modify the Tariff language, which will result in a proceeding open to all stakeholders. MEA shall file with the Commission quarterly reports detailing the progress of the meetings, but shall not propose any particular gas expansion project. These programs, which will be incorporated into Washington Gas's ongoing capital plan, will result in Washington Gas investing up to $70,000,000 over a ten-year period (such investments will be in addition to the funds provided by AltaGas in Paragraph 7 above) to further extend natural gas service to areas within Washington Gas's service territory. Washington Gas shall expend up to $70,000,000 within approximately ten years of the Merger Close. Capital investments made by Washington Gas pursuant to this commitment maybe included in utility rate base and Washington Gas shall earn its authorized return on investment and depreciation on such capital investments, subject to a traditional prudence review by the Commission. Nothing in this paragraph shall be deemed to imply pre-approval by the Commission of any particular gas expansion project. The Commission shall retain its full authority to review any project for prudency prior to its being placed into rate base.

ADDITIONAL COMMITMENTS

Ensuring Safe and Reliable Service

11. AltaGas will continue to devote resources necessary to maintain current service quality and reliability levels and standards under existing Commission orders and regulations. Washington Gas will continue all reporting requirements under existing Commission orders and regulations. Washington Gas will continue to be subject to and will comply with all state and federal pipeline safety requirements. Further, AltaGas shall otherwise ensure that Washington Gas will maintain safety and reliability standards and policies that are substantially comparable to, or better than, those standards and policies maintained by Washington Gas at Merger Closing.

11A. Washington Gas will provide post-acquisition documentation with respect to safety violations, customer service complaints, the time required to satisfy the customer complaints and provide quarterly reports that demonstrate the response time of Washington Gas and the satisfaction or non-satisfaction of the resolution of the customer complaints.

11B. To demonstrate its dedication to safety, within one year of Merger Close, Washington Gas will file a report with the Commission demonstrating what actions they have taken in the past and how it intends to be materially more aggressive toward increasing safety going forward. This report will propose a specific leak mitigation process or other specific, measurable safety measures in the Washington Gas Maryland service territory, the costs of which will be $4 million and will not be recovered by Washington Gas in utility rates.

11C. Washington Gas will devise a plan to implement a new, secure set of Operator Qualification (“OQ”) testing protocols and to ensure that the testing process is secure. This plan should be implemented within 6 months of Merger Closing.

11D. Washington Gas will ensure that it maintains its current emergency Odor Call response and evaluation capability. Washington Gas should be required to submit an annual report to the Division by no later than April 1 of each calendar year detailing the following information for the previous calendar year: (a) The percentage of responses to Priority 1 Odor Calls in which Washington Gas met its target time contained in its Engineering Operations Standards (“EOS”). Washington Gas should meet the goal time for Priority 1 Odor Calls at least 90 percent of the time each year; (b) The average annual response times to Priority 1, 2, and 3 Odor Calls. Washington Gas should maintain or improve upon the current average response times; and (c) The average annual time that it takes for Washington Gas to achieve “gas off” during gas releases caused by excavation damages. The report required by this safety recommendation should contain an explanation for any average annual response time that exceeds the goal in

Washington Gas's EOS for its respective priority Odor Call. The reporting requirement of this safety recommendation should continue for a period of five years after Merger Closing.

11E. Washington Gas will continue its plan to develop and implement a pipeline safety management system ("PSMS") in compliance with the American Petroleum Institute Recommended Practice 1173 ("RP 1173"). The PSMS should be in place within 6 months of the time of Merger Close. In addition, Washington Gas, as part of its PSMS, will conduct a pipeline safety culture assessment in accordance with RP 1173 at a frequency it determines that does not exceed 3 years.

11F. Customer Service Quality Metrics. Washington Gas shall continue to file Customer Service Quality Reports as required in Case 9104 on a quarterly basis, until directed otherwise by the Commission. To determine whether existing Customer Metrics are reflective of existing consumer expectations, AltaGas / Washington Gas shall conduct a root-cause analysis of, and develop an action plan to improve, Washington Gas's customer satisfaction scores. The report should review customer metric data from the past three years from merger close and, shall compare AltaGas / Washington Gas's performance to industry standards. AltaGas / Washington Gas shall file this analysis with the Commission for further review and action no later than six months after merger closing.

12. Washington Gas will be provided access to capital to meet its total projected capital expenditures through 2021. In 2020, Washington Gas will provide the Commission with a report of its actual capital expenditures for 2018 and 2019, and provide the Commission with its projected capital expenditures for 2020 and 2021. Additionally, in 2020, and for a period of ten years thereafter, Washington Gas will provide the Commission with a report annually of its actual capital expenditures for the previous two calendar years, and provide the Commission with its projected capital expenditures for that year and the following year.

Local Corporate Presence

13. Washington Gas's headquarters will remain in the District of Columbia.

14. Within twelve months after Merger Close, the head office of the AltaGas U.S. power business, including the Primary office of the President of AltaGas's U.S. power businesses, will be relocated to Prince George's County, Maryland. Additional U.S. power business functions available to be transitioned to Prince George's County, Maryland within five years after Merger Closing include corporate accounting, human resources, and tax and risk management.

15. The AltaGas Board of Directors and Executive Committee will include the Greater Washington, D.C. metropolitan area among the locations of their meetings.

Board Structure

16. Washington Gas will have a board of directors consisting of seven members, including:
(a) the CEO of Washington Gas; (b) the CEO of AltaGas; (c) four Independent Directors, including if mutually agreeable up to three of the independent board members of WGL; and (d) one other member. Any successors to the legacy-WGL board members will either (1) be Independent Directors, or (2) be former directors or officers of Washington Gas or WGL. The Washington Gas and AltaGas CEOs may nominate successors to their respective positions on the Washington Gas board, each of whom shall be a member of the executive team of Washington Gas or AltaGas, respectively.

17. At least one current member of the WGL board of directors will be recommended by AltaGas for nomination to the AltaGas board of directors. Following that individual's term(s) on the AltaGas board of directors, AltaGas will use all reasonable efforts to nominate at least one member of the Washington Gas board of directors to the AltaGas board of directors. At least two current members of the WGL board of directors will be recommended for nomination to the AUHUS board of directors.

Local Management

18. AltaGas will make reasonable efforts to retain Washington Gas's existing executive management team to manage Washington Gas's business and, as available, provide guidance to AltaGas's other U.S. regulated utility businesses. The executive officers of Washington Gas will maintain their Primary offices in the Greater Washington, D.C. metropolitan area, and the Washington Gas CEO will reside in Washington Gas's service territory. The Washington Gas CEO will have the same authority as under the current Washington Gas authorized approval levels. After Merger Closing, Washington Gas's CEO will be a member of the AltaGas Executive Committee, and Washington Gas's CEO and CFO shall meet with AltaGas's CEO and CFO at least monthly and have direct and frequent access to AltaGas's CEO, CFO, and other members of AltaGas's senior management team. This is intended to ensure that AltaGas's CEO and senior management team is kept informed about important matters affecting Washington Gas.

Consent to Commission Jurisdiction

19. AltaGas, its affiliates, and its subsidiaries all agree to submit to the jurisdiction of the Commission for: (1) all matters related to the Merger and the

enforcement of the conditions set forth herein to the extent relevant to operations of Washington Gas in Maryland; and (2) matters relating to affiliate transactions between Washington Gas and AltaGas or its affiliates to the extent relevant to operations of Washington Gas in Maryland. AltaGas will also cause each of its affiliates that supplies goods or services to Washington Gas to submit to the jurisdiction of the Commission for matters relating to the provision or costs of such goods or services to Washington Gas. The Commission's authority over Washington Gas will be unchanged by the Merger.

NAFTA

20. Notwithstanding any other provisions of these conditions, AltaGas, Washington Gas, and WGL recognize that the State of Maryland and the Government of the United States retain the full right to enact *bona fide* laws and regulations in relation to the production and distribution of natural gas and other carbon-based energy sources. Nothing in these conditions or the Commission's orders restrict or alter these rights, or creates or implies any limitation on the State of Maryland or its agencies, or on the Government of the United States and its agencies, with respect to future measures in this regard. This includes measures to address climate change and other public interest issues such as air quality.

21. AltaGas, Washington Gas, and WGL expressly acknowledge that the Commission, by approving the Merger, is not creating any special expectations to induce AltaGas, as an entity covered by North American Free Trade Agreement ("NAFTA"), to close the Merger.

Employment

22. Washington Gas will honor all existing collective bargaining agreements.

23. Upon Merger Closing and for at least the first two years following Merger Closing, AltaGas: (1) shall not permit a net reduction, due to involuntary attrition as a result of the Merger integration process, in the employment levels at Washington Gas, and (2) AltaGas will provide employees of Washington Gas and other WGL affiliates compensation and benefits (including retirement benefits; provided vested rights under the defined benefit pension plan will continue to be maintained in accordance with applicable legal requirements) that are at least as favorable in the aggregate as the compensation and benefits provided to those employees immediately before execution of the Merger Agreement.

24. Five years after Merger Closing, the total number of employees (actual headcount) within the Greater Washington, D.C. metropolitan area at Washington Gas and its affiliates will be at least 65 greater than as of March 31,

2017, and the total budgeted full-time equivalents (FTEs) within the Greater Washington, D.C. metropolitan area will be at least 190 greater (65+125) than actual headcount as of March 31, 2017, to allow for the estimated future vacancy run rate. AltaGas will file a report annually with the Commission demonstrating its progress in meeting this commitment.

Affiliate Requirements

25. AltaGas will comply and will cause Washington Gas and other AltaGas affiliates to comply with the statutes, regulations, and orders applicable to Washington Gas and its affiliates regarding affiliate transactions. AltaGas will permit the Commission and OPC to examine the accounting records of AltaGas and its affiliates that are the basis for charges to Washington Gas's operations in Maryland to determine the reasonableness of allocation factors used by AltaGas to assign those costs and amounts subject to allocation and direct charges.

26. Washington Gas will comply with its Cost Allocation Manual in transactions with AltaGas and its affiliates. AltaGas and its subsidiaries will use pricing protocols consistent with the rules of the Commission for transfer prices of any intercompany transfers of supplies and services related to Washington Gas.

27. Washington Gas will hold itself out as an entity separate from AltaGas and the Special Purpose Entity (defined in Commitment 33) and conduct business in its own name, will maintain its separate existence and separate franchise and privileges, and will not use the trademarks or service marks of AltaGas in rendering services to its customers (except that Washington Gas may identify itself as an affiliate of AltaGas on a basis consistent with other AltaGas utility subsidiaries).

28. Washington Gas shall provide a side-by-side comparison by function of the pre-Merger corporate and shared-services costs incurred by Washington Gas as compared to the post-Merger corporate and shared-services costs incurred by Washington Gas for the five years after Merger Close). The comparisons shall be filed on an annual basis as a separate letter, and the first letter shall be filed no later than the end of the second quarter following the first full year after Merger Close. The comparisons shall include information by account under the Federal Energy Regulatory Commission ("FERC") Uniform System of Accounts. In the event Washington Gas files a base rate case prior to the receipt of the first year comparison, Washington Gas will include as part of its base rate application a side-by-side comparison, by function, of pre- and post-Merger corporate and shared-services costs available through the test year, to the extent applicable. Additionally, in the second quarter after the first full calendar year following Merger Closing, and for every subsequent year for the next ten years, Washington Gas shall prepare and file with the Commission a report showing (i) AltaGas's annual charges to Washington Gas and (ii) Washington Gas's

corporate and shared services costs. For purposes of this paragraph, pre-Merger means calendar year 2016.

29. Treatment of Customers Receiving Deregulated Commodity.

a. As a condition of acquiring the license currently held by WGL Energy Services, Inc. (WGLES), AltaGas shall provide to all WGLES Maryland residential, small business customers and the Office of People's Counsel, a written Notice, which shall also be filed with the Commission, that:

   i. Describes the transaction and AltaGas acquisition of WGLES;

   ii. Provides customer service contact information for WGLES after merger close and, if it will not change, a statement stating so; and

   iii. Confirms that the terms and conditions of the customer's contract in effect at the time of merger close shall remain the same for the remainder of the contract term.

b. WGLES shall honor all existing contracts with Maryland customers of all rate classes.

Ring Fencing and Credit Rating Protections

30. Washington Gas will not include in any of its debt or credit agreements cross-default provisions between Washington Gas securities and the securities of AltaGas or any other AltaGas affiliate. Washington Gas will not include in its debt or credit agreements any financial covenants or rating agency triggers related to AltaGas or any other AltaGas affiliate. Washington Gas will not assume liability for nor issue any guarantees of the debt of any other entities.

31. Washington Gas will not pledge or use as collateral, or grant a mortgage or other lien on any asset or cash flow, or otherwise pledge such assets or cash flow as security for repayment of the principal or interest of any loan or credit instrument of, or otherwise for the benefit of, AltaGas or any other AltaGas affiliate.

32. Washington Gas will maintain separate books and records and accounts and financial statements (which will be maintained in its service territory). Washington Gas will provide access on demand to its original books and records as maintained in the ordinary course of business in accordance with applicable law. Washington Gas will notify the Commission of any material change in the administration or management of Washington Gas's books and records within 10 days after the event.

33. Washington Gas will hold all its property in its own name, will not assume liability for the debts and will not guarantee the debt or credit instruments of AltaGas or any affiliate of AltaGas.

34. Washington Gas will not participate in a money pool with AltaGas or its affiliates, and will not commingle funds with those of other utilities or entities.

35. Washington Gas will maintain its own separate debt and preferred stock, if any. Washington Gas will maintain its own debt securities and credit ratings on its debt securities. Washington Gas will maintain separate capital structure to finance the activities and operations of Washington Gas. Washington Gas will maintain a 12-month rolling average equity ratio of not less than 48% and no more than 55%, provided that this range is consistent with future Commission orders that address capital structure for Washington Gas. Washington Gas will report to the Commission within 75 days of the end of each quarter the following credit metrics for the then-current year: FFO/debt, FFO/interest, and debt/capitalization. Washington Gas will provide with this report the same metrics for AltaGas.

36. Within the AltaGas corporate structure, Washington Gas will be a wholly-owned, direct subsidiary of a bankruptcy-remote Special Purpose Entity ("SPE") established for the purpose of owning the equity of Washington Gas and ring-fencing Washington Gas, with the intention of removing Washington Gas from the bankruptcy estate of AltaGas and its affiliates. In addition, the following conditions shall apply to the SPE:

a. The SPE will have no employees and no operational functions other than those related to holding the equity interests in Washington Gas.

b. The SPE shall maintain adequate capital in light of its contemplated business purpose, transactions, and liabilities; provided, however, the foregoing shall not require the owners to make any additional capital contributions.

c. At least one of the directors of the SPE will be an independent director, who will be an employee of an administration company in the business of protecting SPEs.

d. The SPE will issue a non-economic interest in the SPE (a "Golden Share") to an administration company in the business of protecting SPEs, which may be the same as the administration company retained to provide the person to serve as the independent director for the SPE.

e. The independent director and the holder of the SPE's Golden Share will have a voting right on matters specified in the SPE governing documents, as described below.

f. A voluntary petition for bankruptcy by the SPE will require the affirmative consent of the holder of the Golden Share and the unanimous vote of the SPE board of directors.

g. A voluntary petition for bankruptcy by Washington Gas will require the affirmative consent of the holder of the Golden Share, the unanimous vote of the SPE board of directors (including the independent director), and the unanimous vote of the Washington Gas board of directors.

h. A unanimous vote by the SPE's board of directors and the affirmative consent of the holder of the Golden Share shall also be required to amend the SPE's organizational documents affecting the voting rights and the other aspects of ring fencing in the SPE governing documents.

i. The SPE will maintain arms-length relationships with each of its affiliates and observe all necessary, appropriate and customary company formalities in its dealings with its affiliates.

j. At all times, the SPE will hold itself out as an entity separate from its affiliates, will conduct business in its own name through its duly authorized directors and officers and comply with all organizational formalities to maintain its separate existence and shall use commercially reasonable efforts to correct any known misunderstanding regarding its separate identity.

k. The SPE shall maintain its own separate books, records, bank accounts and financial statements reflecting its separate assets and liabilities.

l. The SPE shall comply with Generally Accepted Accounting Principles in all material respects (subject, in the case of unaudited financial statements, to the absence of footnotes and to normal year-end audit adjustments) in all financial statements and reports required of it and issue such financial statements and reports separately from any financial statements or reports prepared for its affiliates; provided that such financial statements or reports may be consolidated with those of its affiliates if the separate existence of the SPE and its assets and liabilities are clearly noted therein.

m. The SPE shall account for and manage all of its liabilities separately from any other entity, and pay its own liabilities only out of its own funds.

n. The SPE shall not make loans.

o. The SPE shall neither guarantee nor become obligated for the debts of any other entity nor hold out its credit or assets as being available to satisfy the obligations of any other entity.

p. None of the costs of establishing or operating the SPE shall be charged or allocated to Washington Gas.

37. Within 180 days following Merger Close, AltaGas will obtain a legal opinion from an independent, unaligned counsel, in customary form and substance reasonably satisfactory to the Commission, to the effect that, as a result of the ring-fencing measures AltaGas has implemented for Washington Gas and its subsidiaries, a bankruptcy court in the United States or Canada would not consolidate the assets and liabilities of the SPE or Washington Gas or Washington Gas's subsidiaries with those of AltaGas or its affiliates other than the SPE and Washington Gas or Washington Gas's subsidiaries in the event of a bankruptcy of AltaGas or its affiliates other than the SPE and Washington Gas or Washington Gas's subsidiaries. In the event that such opinion cannot be obtained, AltaGas will promptly implement such measures as are required to obtain such opinion. AltaGas shall conduct an analysis of its operational and financial risk to determine the adequacy of existing ring fencing measures. AltaGas shall file this analysis with the Commission no later than the end of the third quarter in 2018 or 180 days following Merger Close. AltaGas shall not implement any internal corporate reorganization impacting the ring-fencing measures of the SPE and Washington Gas without giving 90 days prior written notice to the Commission, which shall include: (a) an opinion of reputable bankruptcy counsel that the reorganization does not materially impact the effectiveness of Washington Gas's existing ring fencing; or (b) a letter from a reputable bankruptcy counsel describing what changes to the ring fencing would be required to ensure Washington Gas is at least as effectively ring- fenced following the reorganization and a letter from AltaGas committing to obtain a new non-consolidation opinion following the reorganization, and to take any further steps necessary to obtain such an opinion. AltaGas shall not object if the Commission elects to open an investigation into the matter.

38. AltaGas and Washington Gas will use reasonable efforts to maintain Washington Gas's credit ratings at investment-grade for its publicly-traded securities and will use reasonable efforts and prudence to preserve an investment grade credit rating for Washington Gas's senior unsecured debt. Washington Gas will report to the Commission within seven days if Washington Gas, WGL, or AltaGas is rated below investment grade by any of the major credit rating agencies. AltaGas shall also report to the Commission if AltaGas, WGL or Washington Gas are put on negative outlook or are downgraded below current bond ratings by any of the major credit rating agencies. The major credit rating agencies are Standard & Poor, Moody's, Fitch and DBRS. Within 30 days of such action by any of the major credit rating agencies, Washington Gas will describe any measures and plans it intends to implement to restore Washington Gas's credit ratings to investment grade within a targeted timeframe.

39. Washington Gas will not pay extraordinary dividends (i.e., an irregular dividend that is not declared as part of Washington Gas's ordinary course of business) to its parent for three years after Merger Close. Washington Gas will not pay dividends to its parent company if its senior unsecured debt rating is

rated below investment grade by any of the major credit rating agencies.

40. Washington Gas will not pay dividends to its parent company to the extent that the payment would result in a drop of Washington Gas's equity level below 48% of its total capitalization, provided that this equity level is consistent with future capital structure orders.

41. Washington Gas shall demonstrate that customers of Washington Gas are held harmless from adverse rate impacts due to an increase in Washington Gas's cost of debt that is caused by the Merger with AltaGas, or the ongoing affiliation with AltaGas and its affiliates after the Merger. Nothing in this condition will restrict the Commission's authority in setting Washington Gas's rates or Washington Gas's responsibility to support its cost of capital.

Cost Accounting, Tax, and Rate Neutrality

42. Washington Gas will not issue debt or equity in connection with, or to fund, the Merger.

43. Washington Gas will not seek recovery in distribution rates of: (1) any acquisition premium or "goodwill" associated with the Merger; or (2) any transaction costs incurred in connection with the Merger. The categories of transaction costs incurred in connection with consummation of the Merger that will not be recovered from utility customers are: (1) consultant, investment banker, legal, and regulatory support fees, (2) change in control or retention payments, executive severance payments, and the accelerated portion of supplemental executive retirement plan payments, (3) costs associated with the shareholder meetings and a proxy statement related to the Merger approval by WGL shareholders, and (4) costs associated with the imposition of conditions or approval of settlement terms in other state jurisdictions. AltaGas and Washington Gas will file a Report of Action within one hundred and twenty (120) days after closing of the Merger. The Report of Action will contain: (1) the closing date of the Merger; (2) the actual total sale price;

and (3) the actual accounting entries records in AltaGas and Washington Gas's books to reflect the Merger. The Merger-related accounting entries in AltaGas and Washington Gas's books will include: all Transaction Cost accounting entries for AltaGas and Washington Gas; all Merger- related fair value, goodwill, and/or acquisition premium accounting entries for AltaGas and Washington Gas; all Merger-related tax accounting entries for AltaGas and Washington Gas; all Merger-related debt-equity financing accounting entries for AltaGas and Washington Gas; all SPE set-up cost accounting entries for AltaGas and Washington Gas; and all non-consolidation opinion cost accounting entries for AltaGas and Washington Gas, organized by company, data, account number, account title, and amount.

44. Washington Gas will track and account for Merger-related savings, and

transition costs to enable those savings, in its next two base rate cases in which the test year in question includes transition costs. Washington Gas will amortize the transition costs over five years, will not seek recovery in rate proceedings over those five years of any amortized transition costs or corporate costs allocated from AltaGas to Washington Gas in excess of Merger-related savings, and will ensure that customer rates reflect an annual net benefit to Washington Gas's Maryland customers of not less than $800,000 per year over the five years following Merger Close commencing with the first post-Merger base rate case (i.e., $4 million over five years). In the event that Washington Gas files a base rate case in Maryland in 2018, and the Merger Close occurs before or during the pendency of that rate case, then Washington Gas will consent to a ratemaking adjustment to reduce Washington Gas's revenue requirements by $800,000 as a known and measurable reduction in Washington Gas's cost of service during the new rate-effective period. "Transition costs" as used in this commitment are incremental non-recurring costs to facilitate the integration of the companies. "Merger-related savings" as used in this commitment refers to the tangible financial benefits achieved as a result of the Merger for the five years after Merger Close that would not have been possible if the individual companies were to continue to operate separately.

45. AltaGas will ensure that merger accounting is rate-neutral for Washington Gas customers. AltaGas will ensure that any accounting treatments associated with Merger accounting do not affect rates charged to Washington Gas's customers. AltaGas will not record any of the impacts of purchase accounting at Washington Gas, thereby maintaining historical cost accounting at Washington Gas. No goodwill or other fair value adjustments will be recorded at Washington Gas upon consummation of the Merger. If the SEC requires that goodwill be recorded on Washington Gas's books then AltaGas and Washington Gas will ensure that such goodwill does not impact rates charged to Washington Gas's customers.

46. For the purpose of ensuring there are no adverse tax impacts for ratemaking purposes, Washington Gas will continue to derive the allowance for federal or state income taxes in rates on a standalone basis.

47. AltaGas will ensure that consummation of the Merger will not affect accounting and ratemaking treatments of Washington Gas's accumulated deferred income taxes, including excess deferred income taxes, accumulated deferred tax credits and net operating losses (including net operating loss carrybacks and net operating loss carryforwards). No tax elections or accounting methods shall be employed related to the Merger that would in any way result in any reduction to Washington Gas's net accumulated deferred income tax balances that are used to reduce rate base in Washington Gas's rate cases.

48. At the time of Merger Close and every year thereafter, Washington Gas shall provide the Commission with a certificate from an officer of AltaGas

certifying that: (a) AltaGas shall maintain the requisite legal separateness in the corporate reorganization structure; (b) the organization structure serves important business purposes for AltaGas; (c) AltaGas acknowledges that subsequent creditors of WGL and Washington Gas may rely upon the separateness of WGL and Washington Gas and would be significantly harmed in the event separateness is not maintained and a substantive consolidation of WGL and Washington Gas with AltaGas were to occur; and (d) Washington Gas shall make all books and records available to the Commission.

49. The Applicants agree that the Commission may, after investigation and a hearing, order AltaGas to divest its interest in Washington Gas on terms adequate to protect the interests of utility investors (including AltaGas investors) and consumers and the public, if the Commission finds that: (a) one or more of the divestiture conditions described below has occurred, (b) that as a consequence Washington Gas has failed to meet its obligations as a public service company, and (c) that divestiture is necessary to allow Washington Gas to meet its obligations and to protect the interests of its customers in a financially healthy utility and in the continued receipt of reasonably adequate utility service at just and reasonable rates. Any divestiture order made pursuant to this commitment shall be applicable to Washington Gas only to the extent consistent with the application of the criteria in the preceding clauses (a) — (c) and shall be limited to the assets and operations of Washington Gas in Maryland. The divestiture conditions covered by this commitment are: (i) a bankruptcy filing by AltaGas or any of its subsidiaries constituting 10% or more of AltaGas's consolidated assets at the end of its most recent fiscal quarter, or 10% or more of AltaGas's consolidated net income for the twelve (12) months ended at the close of its most recent fiscal quarter; (ii) the rating for AltaGas's senior unsecured long-term public debt securities, without third-party credit enhancement, are downgraded to a rating that indicates "substantial risks" (i.e., below B3 by Moody's or B- by S&P or Fitch) by at least two of the three major credit rating agencies, and, such condition continues for more than six (6) months; or (iii) AltaGas and/or WGL have committed a pattern of material violations of lawful Commission orders or regulations, or applicable provisions of the Public Utilities Article and, despite notice and opportunity to cure such violations, have continued to commit the violations.

50. Following Merger Close, Washington Gas will continue to operate its existing cybersecurity program on a standalone basis. AltaGas will not reduce the number of staff or capital budget at WGL and Washington Gas dedicated to cybersecurity. AltaGas will continue to invest in its cybersecurity program. AltaGas will not integrate the IT systems of AltaGas and its pre-Merger affiliates ("AltaGas IT Systems") with the IT systems of WGL and its pre-Merger affiliates, including Washington Gas ("Washington Gas IT Systems") until AltaGas achieves an aggregate cybersecurity capability maturity comparable to or greater than Washington Gas, as evaluated by a reputable third-party expert. AltaGas shall provide annual reports to the Commission documenting

compliance with this Commitment until AltaGas has achieved an aggregate cybersecurity capability maturity comparable to or greater than Washington Gas's. The costs to achieve and evaluate capability maturity in compliance with this commitment will not be included in customers' rates.

51. The Applicants agree that the Commission would have jurisdiction in any future proceedings regarding any unrecovered liabilities to the State of Maryland that may result from North American Free Trade Agreement ("NAFTA") Chapter Eleven mediations, arbitrations, or any other litigation brought by AltaGas's shareholders under NAFTA. The Commission, MEA, and/or the Maryland Attorney General may initiate such proceeding before the Commission for purposes of this paragraph only.

52. The Applicants will ensure that Maryland customers are treated equitably as compared to District of Columbia customers through the following Most Favored Nation ("MFN") provision:

a. Within thirty (30) days after Merger Close, the Applicants will file with the Commission a copy of the final Order and/or approved Settlement Stipulation from the District of Columbia Public Service Commission ("Benefit Order"), along with an analysis indicating the total dollar amount of any Jurisdiction Allocable Benefits (defined below).

b. X is the quotient established by dividing the D.C. Jurisdiction Allocable Benefits with the D.C. Jurisdictional Factor.

c. Y is the quotient established by dividing the Maryland Jurisdiction Allocable Benefits with the Maryland Jurisdictional Factor.

d. If X is larger than Y, then the Applicants will consent to an order by the Maryland Public Service Commission for AltaGas to provide additional money ("MFN Dollars") for Maryland natural gas expansion programs, such that after taking into consideration such MFN Dollars, the value of Y will be equal to X. Any MFN Dollars required under this provision shall be allocated by the Commission in any manner that is consistent with the public interest.

e. The term "Jurisdiction Allocable Benefits" means jurisdictional-specific direct financial payments (to the extent they will not be recoverable in distribution customer rates) required to be made by the Applicants under a Benefit Order for (i) rate credits or rate offsets or reductions (other than the commitment to minimum net synergies) and/or (ii) funding of any energy distribution-related customer or educational programs (such as: weatherization, energy efficiency, low-income customer support, customer arrearage forgiveness, facilitation of access to gas distribution service including any programs similar to the Natural Gas Expansion Programs, safety, or energy-industry workforce or educational development).

f. The following elements shall not be considered "Jurisdictional Allocable Benefits":
(a) employment and hiring commitments; (b) charitable contributions commitments; (c) corporate headquarters commitments; (d) synergy savings commitments; and (e) electric grid energy storage and/or Tier 1 renewable resources development commitments.

g. The term "Jurisdictional Factor" means 39.78 for Maryland and 17.72 for the District of Columbia. The Jurisdictional Factor figures are derived from Washington Gas's Maryland and District of Columbia rate base (as of December 31, 2016 – the last full month prior to Merger announcement).

DISSENTING OPINION OF CHAIRMAN W. KEVIN HUGHES

For the reasons stated below, I respectfully dissent from the Commission's Order approving the merger of AltaGas Ltd. and WGL Holdings, Inc. and Washington Gas Light Company. Maryland law and Commission precedent state that this acquisition must affirmatively answer the following question: is the transaction structured not to harm the utility's ratepayers?[1] In my view, the proposed merger fails to meet the statutory "no harm" standard and therefore, should be denied. The merger approved by the majority also fails to provide adequate benefits to existing Washington Gas customers and should be denied on that basis as well.

I. THE MERGER PRESENTS A SIGNIFICANT RISK OF HARM TO WASHINGTON GAS AND ITS CUSTOMERS

A. WGL and Washington Gas are Larger and Financially Stronger than AltaGas

Washington Gas has been referred to in these proceedings as a "homegrown utility," and for good reason.[2] It was chartered by Congress in 1848 and began providing gas service to the nation's capital before the invention of telephones or automobiles, or the residential use of electricity.[3] It is a financially healthy company. It boasts strong credit ratings and earnings prospects, and remains WGL's largest asset and most

[1] CEF/EDF, 100 Md. P.S.C. at 363. (note for record: CEG/EDF; *In the Matter of the Application of the Merger of FirstEnergy Corp. and Allegheny Energy, Inc.*, 102 Md. P.S.C. 11 (2011) ("FE/Allegheny").
[2] B. Oliver Direct at 10.
[3] In contrast, the majority of the 570,000 customers served by AltaGas' regulated affiliates result from a 2012 acquisition of SEMCO, which has approximately 300,000 customers. Harris Direct at 3; Staring Direct at 1.

substantial source of earnings.[4] Its parent company, WGL Holdings' stock price has more than doubled from $40.03 on March 3, 2014 to $82.38 on March 1, 2018.[5]

Washington Gas is a strong and battle-tested utility. It has over 1.1 million customers, about two times the customer base of the combined regulated utilities presently owned by AltaGas. And it has 13,582 miles of transmission and distribution piping in its service territory.[6] WGL testified that its financial strength will allow it to meet its existing capital requirements as a regulated gas utility in Maryland, and continue with its five-year plan for unregulated expansion absent the merger with AltaGas.

By comparison, the record demonstrates that AltaGas does not share the financial strengths of WGL and Washington Gas. The Office of People's Counsel, Commission's Technical Staff, and AOBA have all raised serious concerns regarding AltaGas' financial condition. Here are several high-level indicators of those concerns:

- In each of the past five fiscal years, AltaGas has reached well beyond its reported net earnings per share to pay its dividends – a concerning practice that AltaGas expects to continue post-merger,[7] and one fairly characterized as non-traditional for utilities.[8]

- That trend has accelerated, with an increasing dividend payout ratio from 2013 to 2016 (99% to 207%).[9]

- Because AltaGas has repeatedly paid out more in dividends than it has earned, AltaGas has zero Accumulated Retained Earnings.[10]

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[4] B. Oliver Direct at 10 and 11.
[5] See Yahoo Finance Quotes (viewed March 31, 2018): https://finance.yahoo.com/quote/WGL/history?p=WGL
[6] Chapman Direct at 4. In Maryland, Washington Gas has 468,793 customers and 6,089 miles of piping. *Id.*
[7] OPC Exhibit 1; AOBA Reply Brief at 4.
[8] AltaGas' financial approach of using a cash-flow metric for measuring dividend payouts is inconsistent with traditional regulatory and investment analyses for utilities and reflects AltaGas' primarily non-utility orientation. B. Oliver Surrebuttal at 11-12. That approach is a stark contrast to that of WGL Holdings, which has been more measured over time. B. Oliver Direct at 12-14.
[9] OPC Initial Brief at 14.
[10] OPC Initial Brief at 11; Arndt Surrebuttal at 9; See also AOBA Initial Brief at 5.

- AltaGas has a substantial accumulated deficit that is trending upward: $600.4 million from December 12, 2016 to $828.5 million as of September 30, 2017 – a 38% increase over only 9 months.[11]

- AltaGas' has a markedly lower credit rating – at least two notches – compared to each WGL and Washington Gas,[12] which risks an increase in the cost of debt and is a broad indication of the financial strength of the company, including the ability to raise capital.

- AltaGas' stock price has declined sharply in recent years: a 42% drop from $42.26 on March 3, 2014 to $24.35 on March 1, 2018.[13]

AOBA and other parties note that the actions necessary to finance AltaGas' acquisition of WGL will further weaken the company's finances.[14] The large acquisition premium[15] that benefits WGL shareholders has left AltaGas heavily leveraged,[16] as demonstrated by AltaGas funding the acquisition through non-traditional means such as subscription receipts and temporary bridge loans.[17] Furthermore, while the merger approved by the majority adds over $57 million in additional benefits as compared to the original application, these added commitments will result in additional financial strains on the company.

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[11] Arndt Post-Settlement Testimony at 4.

[12] Witness Lapson Rebuttal at Exhibit EL-07 provides the following specific credit ratings. S&P rated AltaGas at BBB (with "Outlook Negative"), while WGL and Washington Gas were rated at "A". Fitch rated AltaGas as BBB, while WGL was rated at "A-" and Washington Gas was rated at "A". Moody's rated WGL as A3 and Washington Gas as A1 but did not rate AltaGas.

[13] OPC Post-Settlement Brief at 5. See Yahoo Finance Quotes (viewed March 31, 2018): https://finance.yahoo.com/quote/ALA.TO/history?p=ALA.TO

[14] Oliver Post-Settlement Testimony at 41.

[15] The acquisition premium is the premium paid by AltaGas to WGL over the market price of WGL's publicly traded stock. OPC witness Arndt calculates the total acquisition premium to be $1.27 billion of which $846.9 million is related to Washington Gas' share and $332 million is related to Maryland's share of Washington Gas. OPC Exhibit 18. (Arndt Surrebuttal) at 24, lines 16-21.

[16] Staff Initial Brief at 15.

[17] OPC reflected that AltaGas must offer a "virtually risk-free investment with an above-average interest rate" to attract capital. OPC Initial Brief at 31.

B. The Acquisition of WGL by AltaGas Imposes Impermissible Financial Risks to Washington Gas Customers

While no merger is without risk,[18] in contrast to previous mergers, this Application presents a significant risk of harm to Washington Gas and its consumers in contravention of the requirements of PUA § 6-105.[19] These harms have not been mitigated by the proposed partial settlement agreement ("Settlement Agreement") or through the majority's merger conditions.

First, the credit rating of WGL and Washington Gas will likely *drop* at least one, and perhaps two notches as a result of this merger.[20] The Joint Applicants acknowledge as much;[21] however, they insist that credit rating agencies had already projected a decline in WGL's credit rating due to its financing of large scale capital projects.[22] On that point, the record evidence is persuasive that the credit rating of the combined post-merger company would be *lower* than would be the credit rating of WGL alone absent the merger with AltaGas. Furthermore, the potential for slight harm absent the merger does not in any way minimize, let alone negate, the more likely potential for greater harm post-merger.

Second, as discussed at length during these proceedings, credit rating agencies expressed particular concern about the impact of the proposed merger on WGL.

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[18] FE/Allegheny, 102 Md. P.S.C. at 35; Exelon, 106 Md. P.S.C. at 123.

[19] The initial Application did not include the added risk of harm to existing Washington Gas customers associated with stranded "gas expansion" efforts proposed in the Settlement and included in the majority's Order.

[20] In a post-merger environment, analysts project that WGL's and WG's respective credit ratings would decrease from A- to BBB+ and A to A-, respectively. See Joint Applicants Reply Brief at 37.

[21] "Given that AltaGas has lower issuer credit ratings relative to the ratings of WGL and Washington Gas, the merger would likely cause all three credit rating agencies to reduce the ratings of WGL and Washington Gas in order to narrow the gap." Lapson Direct at 15.

[22] The decline was characterized by the Joint Applicants as a negative outlook by two of the three ratings agencies. See Lapson Direct at 11. However, the certainty of this decline is called into doubt, as Ms. Lapson testified that a negative outlook is "a mild statement by the credit rating agencies that does not mean that there is some particular action that is going to take place." T. 976 (Lapson).

Moody's and S&P stated that:

> Although AltaGas intends to use a mix of asset sales, additional equity, and incremental debt for the long-term financing of the transaction, we expect WGL, particularly its principal operating utility, Washington Gas, will be heavily relied upon to service the increased level of debt via upstream dividend payments as WGL will account for about 50% of a pro-forma consolidated AltaGas's financial results.[23]
>
> The negative rating outlook on Washington Gas and WGL reflects the prospect for as much as a *four-notch downgrade* of the issuer credit rating on WGL to "BBB" if the company is acquired by AltaGas (italics added).[24]

The adverse assessment of the risks associated with WGL's post-merger cost of debt is only amplified by the rating agencies' commentary ascribing an increased level of debt via upstream dividend payments from WGL to AltaGas.[25] These risks and potential harms are easily foreseeable: given AltaGas' current financial condition, it is reasonable to expect that AltaGas will use WGL's profits to finance its operations and future acquisitions at the expense of Washington Gas' own needs and its customers.[26]

C. The Partial Settlement Agreement and Majority's Conditions Do Not Mitigate Risks of Harm

Although some of the risks of harm to Washington Gas customers caused by the acquisition are impossible to mitigate, it is clear that the settlement and the majority's conditions do not mitigate all harms. To start, no settling party – MEA, Montgomery County or Prince George's County – affirmatively indicated that the potential financial

[23] Staff Initial Brief at 12.
[24] *Id*.
[25] Implementation of AltaGas' growth plan will likely involve tapping WG's profits to support AltaGas 8-10 percent dividend growth through 2021. Staff Initial Brief at 14.
[26] Staff Initial Brief at 15.

harms recognized during the Commission's hearings, were eliminated or mitigated by the conditions included in the Settlement Agreement.[27]

Further, although the ring fencing provision (Condition 37) is indeed a strong "platinum standard" provision that mitigates some harm after the point at which a bankruptcy would occur, it does not prevent harm that comes pre-bankruptcy. Those pre-bankruptcy harms include continued declines in earnings per share and stock prices, possible dividend cuts, reductions in capital and maintenance expenditures for Washington Gas, repeated rate increases, and declines in customer service.[28]

Similarly, Condition 41 does not eliminate or mitigate the harm to Washington Gas customers from adverse rate impacts due to increases in the company's cost of debt caused by the merger, despite my colleagues' strong assertions to the contrary. The amended condition requires that Washington Gas "shall demonstrate" that its customers are held harmless. Although that revised condition attempts to put the burden on Washington Gas to show that the cost of debt is the same as it otherwise would have been, the condition simply places the company and other stakeholders in the position of trying to prove hypotheticals about what would have happened absent the merger, which neither party can actually demonstrate. Thus, under the revised condition, the Commission may have to approve a cost of debt change because other stakeholders could not prove a negative.[29] To avoid this frustrating setup and the protracted litigation that

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[27] For example, see Tr. 3028-3030 (Bannerman). Maryland law and Commission case law note that benefits and harms are *not* to be balanced against each other. See Exelon/CEG, 103 Md. P.S.C. at 45.
[28] Arndt Direct at 17.
[29] AOBA Witness Oliver testified on this specific point, "[I]f you're not sure what the outcomes will be, and if you can't predict with reasonable certainty how the Commission will make those determinations in the future, if you don't know what the peer group comparison will include, what companies, and how they'll be constructed and what the result, have a reasonable understanding of that result, then it's not an effective clause." Tr. 3074-3075 (B. Oliver).

will surely accompany it, the majority should have – at a minimum – required that cost of debt should be calculated based on Washington Gas' current bond rating.[30]

Lastly, the Settlement Agreement and majority Order should have set a higher minimum equity ratio, namely at 50 percent, to protect Washington Gas customers from financial harm. Staff Witness Lubow's testimony was quite clear that a 50 percent equity ratio floor is generally consistent with utilities holding "A" ratings, while a 48 percent equity ratio floor could result in a further downgrade to BBB+, that is, three to four notches lower than where Washington Gas was approximately one year ago."[31] Unfortunately, the majority failed to implement this simple safeguard as a condition, instead settling for a 48 percent floor.

D. The Compositions of the Governing Boards of AltaGas Do Not Adequately Represent the Interests of Washington Gas Customers

The Settlement and majority Order fail to address another notable concern raised by parties at the Commission's hearing; namely, that the compositions of AltaGas' influential governing boards do not mitigate potential and clearly foreseeable harms. The AltaGas Board of Directors and AltaGas Utility Holdings (U.S.) Inc. (AUHUS) Board of Directors - the Boards that will determine critical capital allocations to Washington Gas - will both have severely inadequate representation to protect the interests of Washington Gas customers. Despite representing about 50 percent of AltaGas' financial strength,

[30] Similarly, Condition 38, which in part requires the companies to report if AltaGas, WGL, or Washington Gas are downgraded by credit rating agencies and describe how Washington Gas intends to restore its credit ratings to investment grade in a "targeted timeframe," does not mitigate the harm of such a credit rating drop. The condition contains no specific timeframe for restoring Washington Gas' credit rating to investment grade and no enforcement mechanism to protect ratepayers if the companies fail to achieve this objective.

[31] Staff Post-Settlement Brief at 6.

WGL will have only one representative on AltaGas Board of Directors, and even that is not guaranteed.[32] Similarly, despite representing over 70% of AUHUS financial strength, Washington Gas will only have minority representation on the AUHUS Board of Directors.[33]

Because Washington Gas representatives are disproportionately outnumbered on both boards, the proposed governance structure fails to protect against one of the merger's foreseeable harms – that AltaGas will use Washington Gas' profits to finance other AltaGas activities to the detriment of Washington Gas customers. The majority Order points to Condition 16, which provides that the Washington Gas Board will have a majority of independent directors. Although that provision is an improvement from the original filing, it does nothing to mitigate the potential harm inflicted on Washington Gas customers by a growth-focused parent company like AltaGas.

In conclusion, WGL is a financially strong company with solid credit ratings and stable earnings. Despite short-term commitments to alleviate potential harms, a less fiscally resilient parent company could reduce funding available to Washington Gas for matters like infrastructure maintenance and asset replacement, and could ultimately increase the company's cost of service due to higher borrowing costs. Through their Application and the record in this proceeding, the Joint Applicants are asking this Commission to accept a parent company for Washington Gas that is financially less strong than its current parent, and without any evidence that Washington Gas is in financial distress or requires the merger in order to maintain quality of service, safety or

[32] AOBA Post-Settlement Brief at 38. See Merger Condition 17.
[33] *Id.* Importantly, Washington Gas alone will be roughly equal in size to AltaGas' non-utility operations but have no direct representation on the AltaGas Board and only one WGL Holdings representative.

reliability. Because PUA § 6-105 requires the Commission to ensure that ratepayers are protected against "*any* increased risks of harm from this merger,"[34] and because the conditions included in the majority Order do not eliminate these risks, the acquisition of WGL by AltaGas should be denied.

II. THE MERGER PROVIDES INADEQUATE BENEFITS TO EXISTING WASHINGTON GAS CUSTOMERS

A. Washington Gas Will Not Receive Significant Operational Benefits from AltaGas and its Utilities

In recent merger cases, the Commission has placed great importance on the operational benefits that a new parent company can offer to a Maryland utility and its customers. In the case of the Exelon–Constellation and Exelon-Pepco Holdings, Inc. mergers, the Commission focused on improving reliability performance with better cost control, leveraging greater economies of scale through synergy savings, and enabling the pooling of resources to restore service to customers more quickly following major storms.[35] Also important was the sharing of "best practices" among distribution companies to increase day-to-day operational efficiencies and effectiveness. In approving these mergers, the Commission acknowledged the benefits of having a parent company "nationally recognized for its standards of excellence."[36]

Throughout our proceedings, AltaGas certainly has demonstrated that its largest utility SEMCO is a well run company. Nevertheless, it is a much smaller utility than

[34] Exelon/CEG, 103 Md. P.S.C. at 45. (emphasis in original.)
[35] See *In the Matter of the Merger of Exelon Corporation and Constellation Energy Group, Inc.*, 103 MD PSC 22 (2012), Order No. 84698, Case No. 9271 ("Exelon/CEG"); *In the Matter of the Merger of Exelon Corporation and Pepco Holdings, Inc*., 106 MD PSC 95 (2015), Order No. 86990, Case No. 9361 ("Exelon/Pepco"); Exelon/Pepco, Order No. 86990 at 1-3.
[36] Order No. 86990 at 2-3.

Washington Gas, with approximately one-third the customer base. SEMCO is a largely rural utility located in Michigan[37] and because of its geographic separation, does not lend itself to the same mutual assistance and operational efficiency benefits that have aided Baltimore Gas & Electric, Pepco and Delmarva.[38] Moreover, AltaGas only acquired SEMCO in 2012 and as a parent company, does not have a track record in operating a large regulated urban utility in the United States. This is in stark contrast to the Exelon/PHI merger, in which Exelon had a demonstrated history of successfully operating large, urban, East Coast utilities.

While there is a great deal that Washington Gas can offer AltaGas utilities in terms of experience, operational excellence and best practices, there is less that AltaGas can offer Washington Gas in return. Certainly, AltaGas and its utilities possess operational strengths, but Washington Gas possesses those same strengths in abundance. And while AltaGas President and CEO Harris points to AltaGas' experience working in cold weather conditions in Alaska and Canada,[39] that is of limited value in the eastern Mid-Atlantic region where Washington Gas operates. Similarly, while SEMCO has experience with accelerated gas pipeline replacements, Washington Gas is in the fifth year of its own expansive and successful STRIDE pipeline replacement program. To summarize, the reliability, best practices, operational efficiencies and mutual assistance benefits that were so important in the Exelon-BGE and Exelon-PHI mergers, are not nearly as meaningful in this proposed merger.

[37] AltaGas' other U.S. gas utility, ENSTAR, is small with approximately 143,000 customers and located in Alaska.

[38] While Condition 44 requires AltaGas to credit Maryland customers not less than $800,000 per year in merger-related savings for 5 years, Staff witness Welchlin concludes that over half of these projected savings, including those related to functional alignment and contract services, are "accounting maneuver[s]," "unlikely to occur" or "largely speculative" (Staff Initial Brief at 17).

[39] Tr. at 195 (Witness Harris response to question from Commissioner Herman).

Finally, the importance of WGL maintaining a robust and well funded cybersecurity program cannot be overstated. Like other Maryland utilities, Washington Gas is on the front lines of the escalating war against cybersecurity threats. The Commission should insist that any parent company seeking to acquire a major utility like Washington Gas demonstrate that it is a national leader (or in the case of a foreign company, an international leader) in developing and implementing cybersecurity programs. While AltaGas should be commended for the steps it has taken on cybersecurity, it has not demonstrated, in the record of this case at least, that it is such a leader in the energy and utility sectors.[40] In fact, Condition 50, which was never discussed in our hearings, acknowledges some concerns in this area. The majority takes the step of prohibiting AltaGas from integrating its IT systems with Washington Gas until AltaGas "*achieves* an aggregate cybersecurity capability maturity comparable to or greater than Washington Gas" (emphasis added). Who determines if this condition has actually been met is unclear. Regardless, cybersecurity programs should be a benefit a parent company brings to a merger.

B. Direct Benefits to Existing Washington Gas Customers are Meager and Inadequate

PUA § 6-105(g)(3)(i) requires the Commission to determine whether the proposed merger "is consistent with the public interest, convenience, and necessity, including benefits and no harm to consumers". While the merger presents a significant risk of harm to Washington Gas customers and should be rejected on that basis, it also does not provide adequate and commensurate benefits to existing customers and fails this

[40] Tr. at 150-152 (exchange between Chairman Hughes and Witness Harris).

requirement of the § 6-105(g) test as well. The Commission has previously held that "benefits" must be "certain, measurable and incremental benefits to ratepayers."[41] This means that benefits must accrue to existing ratepayers, not residents or businesses that might become ratepayers sometime in the future. And certainly it does not include residents or businesses that live or are located outside a utility's service territory.

Under the merger conditions approved by the majority, Washington Gas customers will receive a one-time $50 rate credit totaling $30.5 million.[42] In comparison, the approved merger requires $22.88 million to go to Montgomery and Prince George's Counties for clean energy initiatives and $30.32 million to MEA for a Gas Expansion Fund.[43] Thus, of the $83.7 million in financial benefits, only $30.5 million, or 36 percent, is going directly to Washington Gas customers. This allocation is woefully inadequate in terms of direct customer benefits.

To be certain, some existing customers will receive benefits from the programs offered by Montgomery and Prince George's counties. The $30.26 million Gas Expansion Fund, however, and AltaGas' commitment to spend up to $70 million in additional ratepayer funds on gas expansion projects,[44] will go to future customers and not to existing ones who should benefit from this merger.[45] Furthermore, existing

[41] Exelon/CEG, 103 MD PSC at 45.
[42] While the Settlement Agreement reduced the rate credit to $21.7 million, the majority restored $8.8 million in credits for C&I customers and reduced funding going to the Settling Parties by $2.65 million for Prince George's County, $2.87 million for Montgomery County, and the entire $4.6 million for MEA to spend on existing C&I customers primarily in Southern Maryland. (See merger Condition 2 and Settling Parties Condition 2).
[43] The majority also reduced the amount going to MEA for gas expansion from $33 million under the Settling Parties agreement to $30.32 million. (See merger Condition 7).
[44] See Condition 10A.
[45] Condition 7 requires a majority of the $30.32 million in the Gas Expansion Fund be spent in the Washington Gas service territory. This means up to $15 million may be spent to benefit the customers of other gas utilities throughout Maryland.

customers will bear the risk of pipeline expansion projects that may result in stranded assets because of changing energy policies.[46] They may also bear the risk of uneconomic gas expansion projects resulting from AltaGas' $70 million expansion commitment, if the Commission approves the tariff changes suggested in Condition 10A.

Opposition to including $100 million in gas expansion conditions in the merger have been raised in public comments to the Commission by legislators, alternative energy suppliers and environmental groups.[47] The majority concludes that gas expansion is in the "public interest" citing "economic growth" and "improved environmental impact," but does not address the serious concerns raised by these stakeholders to the contrary. For instance, the majority disregards concerns raised by propane gas dealers that Maryland small businesses are financially harmed when the State subsidizes a competitor through natural gas expansion. Further, the majority recognizes that environmental groups oppose gas expansion as "contrary to the State's policy on greenhouse gas reduction and its commitment to clean energy," but states those concerns were raised outside the record and cannot be addressed. Given that the gas expansion proposal was made late in the proceedings, and after the close of the Commission's initial evidentiary hearings, the majority should have considered and addressed these environmental concerns in the context of the public interest test in PUA § 6-105(g).

The acquisition of WGL by AltaGas comes at a time when Washington Gas customers are facing the substantial burden of paying for the company's gas pipeline

[46] See Tr. at 2943-2946 (discussion between Chairman Hughes and MEA Director Tung)

[47] See letters in the public correspondence file for CN 9449 from Senator Thomas Mac Middleton, Sierra Club, Chesapeake Climate Action Network (and others), Ellen Valentino (Mid-Atlantic Petroleum Dealers Association and Mid-Atlantic Propane Gas Association), Michael Abercrombie (Cato) Michael Boulden (Boulden Brothers Propane), Burch Oil Company, J. Blacklock Wills (Wills Group), Frank Taylor (Taylor Gas Co.) and others.

replacement program, a multi-decade initiative called STRIDE. The General Assembly authorized STRIDE in 2013 to incentivize gas companies to replace aging and deteriorating cast iron and bare steel mains and services on an accelerated timeframe. STRIDE is not only important for public safety reasons, it also dramatically reduces methane emissions from leaking pipes and services that contribute to climate change.

In describing Washington Gas' expected request to authorize a second five-year STRIDE program, Company witness Chapman noted that the upcoming filing is "going to be larger than the initial first five-year filing as far as overall magnitude."[48] Washington Gas' first STRIDE program cost approximately $200 million over five years.[49] If approved, Washington Gas customers will bear these substantial infrastructure costs for decades to come. The Settling Parties could have partially mitigated future rate increases by requiring AltaGas to make a significant contribution (e.g., at a minimum, the $83.7 million cited above) to Washington Gas' future STRIDE initiatives. In my view, that would have been a direct benefit in keeping with PUA § 6-105(g) and in the best interest of existing customers.

W. Kevin Hughes
Chairman

[48] Tr. 2651 (Chapman).
[49] Case No. 9335, WGL STRIDE Application, November 7, 2013 (ML # 150543).