

ORDER NO. 80764

IN THE MATTER OF THE COMMISSION'S
INVESTIGATION INTO A RESIDENTIAL
ELECTRIC RATE STABILIZATION AND
MARKET TRANSITION PLAN FOR BALTIMORE
GAS AND ELECTRIC COMPANY.

* BEFORE THE
PUBLIC SERVICE COMMISSION
* OF MARYLAND
* _____

CASE NO. 9052

On April 20, 2006, Baltimore Gas and Electric Company ("BGE" or "Company") filed with the Commission a Motion to Amend Order ("Motion to Amend"). In the Motion to Amend, BGE asks the Commission to alter the rate stabilization plan ("Original Plan") for residential customers of the Company previously adopted by the Commission in Order No. 80638, issued in this proceeding on March 6, 2006. BGE's latest proposal is referred to herein as the "Amended Plan."¹

The Original Plan adopted by the Commission on March 6 was based upon a proposal from the Commission's Technical Staff ("Staff"). The Commission modified the Staff proposal to provide customers the opportunity for more gradual implementation of full Standard Offer Service ("SOS") market rates upon the expiration of the BGE price cap on July 1, 2006. The Original Plan provided

¹ Neither the Original Plan nor BGE's Amended Plan affects a residential customer's right to shop for competitive electric supply and possibly secure lower supply rates. It was revealed at the hearing that at least three competitive suppliers will offer residential customers an electric supply alternative.

customers the option to either pay full market rates for SOS on July 1, 2006,² or customers may participate in the rate stabilization plan to more gradually implement increased generation rates over a two-year period.³

It is important to reiterate at the outset of this Order that what we adopt herein is a rate **mitigation** plan. The plan adopted herein will help customers to cope with rising energy prices. The suggestion by some parties that we reject a rate stabilization plan does not help customers; it harms them. If we were to reject the plan, as some parties and the dissent suggests, the result would be to expose customers to full market rates sooner - and to limit customer choices. Despite the rhetoric of some, adopting a rate mitigation plan is in the interest of customers, and the alternative is not.

In Order No. 80638, the Commission determined that the Original Plan was in the public interest, providing a meaningful opportunity for more gradual implementation of market rates. The Commission determined that the Plan provided rate stability and eased customer transitions to the new market-based rates, and did so in a manner that did not imperil the Company's financial

² The result of BGE's recent competitive bid process pursuant to Commission Case No. 8908 results in an increase in SOS rates that will cause a typical customer's total bill to increase approximately 72 percent, beginning July 1, 2006.

³ Order No. 80638 also provided a three-year program for low-income customers.

integrity. Importantly, the Plan also maintained the competitive neutrality necessary for the promotion of retail competition.

In its Motion to Amend, BGE notes that intensive discussions over the last several weeks with customers, elected officials, and others developed further information leading to the Company's request to change the Plan. Specifically, the Company states that customers and various public officials indicated a strong preference for an "opt-in" plan, which has also been advocated by the Office of People's Counsel ("OPC"), the legal representative for residential customers. Therefore, the Company requests that the Commission modify the Plan to allow opt-in participation by customers. It notes that an opt-in method would also provide greater financial leeway to the Company, allowing a more gradual implementation of the new rates, a lengthening of the deferred payment period, and a grace period for customers to enroll in the plan if they miss the initial enrollment period. The Company also observes that a full education campaign will allow all such customers who desire to participate the opportunity to do so.

Specifically, BGE proposes a 19.4 percent increase for Amended Plan customers on July 1, 2006 and a second-step five percent increase on January 1, 2007, and then holding steady until May 31, 2007. On June 1, 2007, customers will begin to repay the deferred amount. Additionally, the Company currently projects a 25

percent rate increase on June 1, 2007.⁴ That rate would apply until January 1, 2008, at which time opt-in customers would move to full market rates, with payment of deferred amounts continuing through May 2009.

Increases in the Amended Plan compare to the 21 percent July 2006 increase under the Original Plan, which then gradually increases toward full market rates in March 2007. During the deferral repayment period of the Original Plan, monthly bill increases range from 61 percent to 131 percent of current bills.

The Original Plan provided for commencement of the recovery of the deferred balances starting in March 2007. In its Amended Plan, BGE proposes repayment of deferrals commencing on June 1, 2007, and continuing for two years, through May 2009, with a true-up period at the end.⁵ Therefore, the Plan would effectively extend to three years, compared to the two years in the Original Plan; deferrals now would extend from July 1, 2006 through January 1, 2008, and the payment of deferred balances from June 2007 through May 2009. The Company would also extend the repayment for low-income customers for one additional year, for a total four-year plan for these customers. As with the Original Plan, the recovery from customers will be based upon a consumption-based

⁴ Adjustment in June 2007 may be necessary as the 2007-2008 SOS service year bids are to be implemented in June 2007, with the exact rates at that time dependent on the outcome of the bid process.

⁵ The true-up, provided under both the Original Plan accepted by the Commission and in the Amended Plan now proposed, insures fairness to the Company and customers by providing either refunds or a surcharge for overpayments or underpayments to ensure matching of the plan payments and costs.

charge expressed in cents per kilowatt hour. The paybacks would be calculated on the basis of kilowatt-hours used, so customers would pay back based on their electric usage during the payback period. Attachment 1 of this Order provides a graphic representation of monthly bills for typical customers who opt-in or do not opt-in to the proposed Plan.

The Company further proposes that carrying costs on the deferred balance would be adjusted to the Company's actual short-term borrowing rate. Also, BGE now asserts that it has the capability to closely estimate the outstanding deferral balances of participating customers who leave the service territory, allowing for the provision of final billed amounts based on their proportionate share of the deferred balance remaining.⁶

The Company also notes that greater relief may be forthcoming, provided the pending merger between its parent company, Constellation Energy Group ("Constellation") and the FPL Group, Inc. ("FPL") is approved. The merger is pending before the Commission in Case No. 9054. The Company contends that the merger would result in substantial benefits, and states agreement was reached with the Governor and legislative leaders that would have provided \$600 million in benefits to residential customers. The Company and Constellation will stand by this offer if the merger is

⁶ This differs from the Original Plan as customers leaving the service territory would not have been billed upon exiting, but would have had their deferred balances included in the outstanding balance payable by all plan customers.

closed. The Company states that this amount could offset the five percent increase for January 2007 and continue savings of \$60 million per year for a 10-year period, reducing residential bills by \$4.00 a month for the 10-year period.

The Commission scheduled a further hearing and status conference in this matter for April 27, 2006 to receive comments about the Amended Plan. At that hearing, the Commission granted petitions to intervene from the Maryland Public Interest Research Group ("MaryPIRG"), the International Brotherhood of Electrical Workers ("IBEW") and Montgomery County, Maryland.⁷

Also at the hearing, the Commission heard further explanation of the Amended Plan,⁸ and gathered comment on it from the parties and the public. Company representatives explained the amendments BGE is proposing to the Original Plan, and provided information on it and answered questions. Members of the public also commented on the proposal. The public commentators expressed a variety of concerns regarding the increased generation costs with the expiration of the rate caps, including the ability of customers, particularly low-income customers, to pay.

MaryPIRG and Baltimore City asked the Commission to investigate BGE's costs of procuring generation, executive

⁷ Commerce Energy, Inc. (a licensed competitive supplier) also filed a petition to intervene following the hearing which petition is hereby granted. In the Petition, Commerce notes its plans to offer electric supply to BGE residential customers.

⁸ The Commission notes that BGE Witness Case provided an explanation of BGE's Amended Plan and answered Commission questions about its plan.

compensation packages, and the proposed merger between Constellation and FPL. IBEW requested that the Commission consider the rate stabilization plan on its own merits without regard to the merger. OPC indicated its generic approval of the Company's proposed changes to the Original Plan, but opposes the inclusion of carrying charges for deferred amounts. Staff supports the changes proposed in the Motion to Amend, stating that the amendments improve the program.

As a preliminary matter, prior to the April 27, 2006 hearing, several parties filed motions. In addition to granting the aforementioned motions to intervene, the Commission denied the Request of Baltimore City to move the location and time of the hearing and its Motion to allow witness testimony and cross-examination. The Motions were denied because the fast-approaching July 1 implementation date for the new rates and the need for customer education gives the Commission and the parties little time to consider and, if approved, implement the Amended Plan. Also, public notice of the hearing had already been provided. Indeed, many members of the public did attend and participate in this hearing. For these same reasons, the Commission finds that it is not practical to grant MaryPIRG's Motion for a §3-104(c) evening, public hearing. Section 3-104(c) applies to application for rate increases, which this proceeding is not. The PSC regulates the rates of BGE's electric distribution and transmission wires, not the price of electricity. Therefore, that motion is also denied.

Baltimore City filed a Motion to Stay Proceedings and a Motion to Consolidate Case Nos. 9052 and 9054. OPC filed responses in opposition to both Motions. OPC noted that granting these motions could have the adverse effect of denying residential

consumers the benefits of the Amended Plan, which OPC states may be more attractive to consumers than the Original Plan. Staff also opposed the Motion to Consolidate. According to Staff, Case Nos. 9052 and 9054 lack common issues of fact and law and therefore it is inappropriate to consolidate the cases. Further, consolidation could cause customer confusion and miscommunication. The Commission agrees with OPC and Staff's comments, and observes that the timeframe for consideration of amendments to the Plan is much shorter than the timeframe necessary to consider the merger proceeding. Therefore, the Commission hereby denies both the Motion to Stay Proceedings and the Motion to Consolidate. The Commission also denies Baltimore City's Motion to Compel Production of Documents because the discovery items are not germane to this case and the motion (which was cross-filed) was granted in Case No. 9054.

MaryPIRG filed a Motion for Recusal of the four Commissioners signing this order. MaryPIRG alleges that the four Commissioners violated §3-108 of the PUC Article, which prohibits *ex parte*

communications with parties,⁹ when the Commissioners met with a member of the Governor's staff on March 14, 2006 to update him about BGE's forthcoming rate changes. In signing this Order, the four Commissioners are stating that they did not violate §3-108 and therefore will not recuse themselves in this matter. First, the member of the Governor's staff is not a party to these proceedings. Further, at the meeting the Commissioners discussed matters previously decided in this case, specifically Order No. 80638, which is a public record. Finally, BGE's Amended Plan, the subject of this order, was not filed until April 20, 2006, well after the meeting with the Governor's staff. Therefore, there was no violation of §3-108 or any other relevant provision of law.¹⁰

Prior to addressing the changes to the Original Plan proposed in the Motion to Amend, the Commission must address several important aspects about the expiration of BGE's residential rate caps. A great number of inaccuracies and misrepresentations of law and fact were advanced during the public debate about this issue and again during the hearing held in this matter. The Commission addresses these matters so as to once again inform the debate. First, it is important to repeat, as we have on many occasions, that Maryland's Electric Customer Choice and Competition Act of 1999¹¹ (the "Act") provides the Commission with no choice

⁹ Section 3-108 states: Unless notice is provided to each other party in a case before the Commission, a party or person acting on behalf of a party may not contact ex parte a commissioner or a hearing examiner regarding the merits of the case.

¹⁰ The list of reasons why the Motion for Recusal should be denied is not all inclusive.

¹¹ Annotated Code of Maryland, *Public Utility Companies Article* ("PUC Article"), §§ 7-501 et seq.

but to allow BGE and similarly-situated companies the opportunity to recover their costs of providing the electricity needed to provide Standard Offer Service to residential and small commercial customers.¹² Specifically, section 7-510(c)(3)(ii) of the *PUC Article* provides in relevant part as follows:

(ii) the Commission shall extend the obligation to provide standard offer service to residential and small commercial customers **at a market price that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.**
(emphasis supplied)

The costs incurred by BGE in its procurement of wholesale power are in fact prudently incurred and verifiable. As discussed below in detail, those costs are incurred in a carefully designed, carefully monitored, competitive bid. The costs comply with the statutory standard and there is no legal basis to deny their recovery. Section 7-510(c)(3)(ii) of the *PUC Article* is the foundation of the competitive electricity procurement process for SOS studied, developed, tested and overseen by the Commission and all segments of Maryland's electricity consumers, generators, suppliers, and utilities in the course of Commission Case No. 8908.¹³ The procurement process was the result of a settlement

¹² Important constitutional and statutory provisions prohibit the Commission or any governmental body from appropriating the property of private citizens without due process of law and just compensation. Acting in contravention to those principles constitutes unlawful confiscation. **See U. S. Const., Fifth Amendment and Public Utility Companies Article.**

¹³ Re Competitive Selection of Electricity Supplier/Standard Offer Service, Case No. 8908, Order No. 78400, 94 Md. PSC 113 (2003), and Re Competitive Selection of Electricity Supplier/Standard Offer Service,

intensively negotiated and supported by representatives of all customer segments (residential, small, medium, large commercial and industrial) including the Office of People's Counsel, utilities, wholesale and retail energy suppliers, the Maryland Energy Administration, the Power Plant Research Program, the Office of People's Counsel, and the Commission Staff. The procurement process is intended to be as transparent and objective as possible to encourage bidding from generation companies of all sizes and types as well as wholesale suppliers who do not own generation. The process selects winning bids to supply the required SOS by choosing the lowest bids. The Price Anomaly Threshold procedure provides an additional protection to Residential SOS customers against the selection of bids that could be considered above market levels.¹⁴

Equally important to the mechanics of the procurement and bidding process are the strict protections against any information sharing between a utility and its wholesale affiliate or any special advantage that could be gained by an affiliate. The entire procurement process is overseen by the Commission Staff and the Commission's independent energy procurement consultant. This process has been supported as a model for its protections against

Case No. 8908, Phase II, Order No. 78710, 94 Md. PSC 286 (2003), hereinafter "Case No. 8908."

¹⁴ Case No. 8908, Phase II, 94 Md. PSC 286 (2003).

the potential abuse of the relationship between a utility and its affiliate by the Federal Energy Regulatory Commission.¹⁵

¹⁵ *Allegheny Energy Supply Company, LLC.*, 108 FERC ¶ 61,082, Order Granting Authorization to Make Affiliate Sales, Docket No. ER04-730-000 (July 29, 2004). The FERC order specifically addressed the opportunity for The Potomac Edison Company (Allegheny Power) wholesale affiliate to participate in its Case 8908 SOS procurement. Because SOS procurement for the four Maryland investor owned utilities is essentially identical, the following quotes from that order are also relevant to the BGE procurement that produced its residential price increases:

"The underlying principle when evaluating an RFP under the Edgar criteria is that no affiliate should receive undue preference during any stage of the RFP. The following four guidelines will help the Commission [FERC] determine if an RFP satisfies that underlying principle.

- a. Transparency: the competitive solicitation process should be open and fair.
- b. Definition: the product or products sought through the competitive solicitation should be precisely defined.
- c. Evaluation: evaluation criteria should be standardized and applied equally to all bids and bidders.
- d. Oversight: an independent third party should design the solicitation, administer bidding, and evaluate bids prior to the company's selection.

Potomac's [Allegheny Power] RFP process is an example of an RFP process that would meet the foregoing guidelines. We believe that the design, administration, and bid evaluation phases of Potomac's RFP were transparent. Potomac achieved transparency in the design phase through a collaborative process involving informed parties with diverse interests and an on-the-record, public Maryland Commission proceeding...

We believe that Potomac's RFP was clearly defined.... By including information such as bidder qualification criteria and bid evaluation method in the RFP, Potomac helped ensure that the parameters of the RFP were clearly defined prior to the solicitation of bids...

We believe Potomac evaluated bids based on standardized criteria and applied that criteria equally to all bids regardless of affiliation. By setting a minimum standard for non-price factors, Potomac was able to select bids based on price alone... Selecting bids based only on price ensured that affiliates were not given preferential treatment during the selection phase of the process.

We believe Potomac's RFP had sufficient independent oversight. As described above, Potomac's RFP was monitored by an independent consultant. The fact that this consultant was selected by the

The Act is clear that the Commission has absolutely no authority to deny BGE the ability to charge a market price for SOS to residential and small commercial customers that permits recovery of the verifiable, prudently incurred costs to procure or produce the electricity plus a reasonable return.¹⁶ The Commission, since the passage of the Act in 1999, has endeavored to implement these and other provisions of the Act consistent with the statute, and has done so in a manner praised by the federal agency with authority over wholesale electricity transactions.

Additionally, it is important to note that the rate increase under discussion in this proceeding is not a BGE rate increase. Instead, it is the painful result of moving to market-based electricity rates at the conclusion of an extended period of time during which rates were frozen at a level 6.5 percent below

Maryland Commission and that the consultant's compensation was determined by the Maryland Commission before the issuance of the RFP helped ensure the consultant's lack of financial interest in the outcome of the RFP. This consultant reported its findings directly to the Maryland Commission. We believe the presence of this independent third party, as well as the involvement of the Maryland Commission, provided sufficient independent third-party oversight of the design, administration, and bid evaluation stages of Potomac's RFP.

¹⁶ While the Commission relies on its own Office of General Counsel for legal advice, it does observe that **Maryland's Attorney General**, in an opinion letter dated December 16, 2005, agrees with the Commission on this point. Quoting from among other consistent passages in the December 16 opinion letter, the Attorney General states: "**[T]he combination of the filed rate doctrine and constitutional limits on taking mean that electric companies would eventually have to be permitted to recover these costs, meaning that the problem of high rates could be deferred but not eliminated.**" (emphasis supplied). Of course, the Original Plan, the Amended Plan, and the legislation (HB 1712/HB 1525) considered but not enacted by the General Assembly in the recently-concluded 2006 session all adhere to this basic principle. See Attachment 2.

the rates that were in effect in 1993. If that were not enough, this year's energy bidding occurred during the course of record high prices for fuels used to generate electricity, as a result of damage to America's energy infrastructure due to the active 2005 hurricane season and the energy price instability arising out of war in Iraq and rapid energy demand growth in China and other developing countries. Indeed, while the focus has understandably been on the dramatic increase in current electric prices as compared to BGE residential prices that were originally set 13 years ago and reduced by 6.5 percent six years ago, BGE residential bills for customers who do not participate in a rate stabilization plan will still be comparable to or lower than residential bills in general for customers in the Mid-Atlantic and Northeast.¹⁷

The increase in wholesale power costs which are occurring are driven by a worldwide increase in fuel costs. There is no entity in the State of Maryland that has the authority or ability to change this. Nor can we just wish away or ignore these economic realities. To do so would invite service disruptions, brownouts, and potentially, bankruptcy.

At the April 27 hearing, the question was raised as to whether the Company could afford to do more than defer recovery of its purchased power costs. In this regard, it can be noted that BGE's profits from electric operations are approximately \$194

¹⁷ BGE, April 26, 2006 Supplementary Filing, Exhibit 4.

million per year, and its anticipated costs of procuring the power needed to provide service to its SOS customers will exceed \$1.7 billion per year. It is readily seen that the Company cannot absorb those costs without going into bankruptcy. Additionally, merely the threat of legislative action that would unduly delay recovery of power procurement costs caused several rating agencies to downgrade their ratings on BGE's securities. Credit downgrades impose significant costs on borrowers, which get passed on to the borrowers' customers, because investors charge higher interest rates on lower-rated securities. That is why the Maryland government so zealously guards its own Triple-A credit rating. That is also why the financial integrity of the Company is an important consideration by the Commission, because it directly affects the costs to its customers for electric distribution service.

Some commentators at the hearing and in pleadings asked the Commission to rescind the "stranded costs"¹⁸ recovered by the Company since passage of the Act. In Commission Case Nos. 8794/8804,¹⁹ the BGE electric restructuring proceeding, the parties to that proceeding argued vociferously over whether the Company had stranded costs or stranded benefits. After intense litigation,

¹⁸ Section 7-513 of the Act (*PUC Article §7-513*) provides generally for Commission investigation of an electric company's transition costs (or transition benefits), if any. Transition costs are defined in *PUC Article §7-501(p)* as costs that traditionally would have been recovered under traditional regulation but may not be recoverable in a restructured electricity supply market.

¹⁹ 90 MD PSC 197 (1999).

fourteen parties²⁰ including the residential customers' representative, OPC, entered into a settlement agreement proposing for the Commission's consideration a net stranded cost for BGE of \$528 million. The Commission adopted the settlement in Order No. 75757 on November 10, 1999. Of the \$528 million in overall stranded costs, \$193.8 million was assigned to the residential customer class, rather than the full \$528 million as has been repeatedly alleged during the public debate.

At the time that litigation was occurring, generation was not valued as highly as it is today. Accordingly, when the Commission at that time weighed the settlement agreement's proposed finding on the amount of stranded costs and the evidence in the proceeding concerning not only stranded costs but stranded benefits, the Commission concluded that the settlement agreement, which also provided a six-year residential rate freeze plus a 6.5% rate reduction, was just and reasonable in this regard and in the public interest.²¹

While some parties and members of the public desire the Commission to renege on the 1999 finding that the Company had stranded costs, the Act provides the Commission with no authority

²⁰ Numerous parties represented residential, commercial and industrial customers as well as parties representing state agencies and electric suppliers supported the settlement. A number of parties also undertook their own analysis of stranded costs and presented their own estimates in the course of litigation.

²¹ The Commission supported the \$521 million to \$663 million range of stranded cost estimates advocated by Maryland Energy Administration witness Kahal and found that the \$528 million stranded cost amount in the settlement was within that range.

to do so. The Act allowed parties to enter into restructuring settlement agreements, and the Commission to accept them, dealing with such provisions as stranded costs (or benefits) and the length and terms of the transition periods, including rate reductions and caps. The stranded cost provisions in the settlement agreement accepted by the Commission in Order No. 75757 are part and parcel of the whole agreement, which included the rate reductions and rate cap periods among many other provisions. In fact, the additional two years of reduced and capped BGE residential rates compared to what was required by the statute saved BGE residential customers approximately \$400 million²² - more than twice what they paid over six years for stranded costs. The Commission cannot undo one part of the settlement without undoing the whole, and it lacks both the authority and ability, due to the intricately interwoven (and largely historical) threads of that complicated settlement, to undo the whole. Additionally, §7-513 (d)(2)(ii) serves as a bar to Commission action adjusting the stranded costs associated with generating assets sold to an affiliate. This statutory provision obviously applies to the BGE/Constellation transaction - and the Commission is bound by the statute. Only the General Assembly can change the law - the Commission cannot. Finally, the prohibition

²² This number is derived by increasing all BGE residential bills by the percentage increase in Pepco residential bills for 2004-05 and 2005-06.

on retroactive ratemaking also serves as a bar to any attempt to recapture stranded costs at this late date.²³

There is no question that energy costs and in particular rising energy costs present a special challenge to low-income customers. This is recognized in the special three-year mitigation time frame of the Original Plan and the four-year time frame of BGE's Amended Plan. However, it must not be overlooked that the bill payment benefits provided by the Electric Universal Service Program ("EUSP"), the Maryland Energy Assistance Program ("MEAP"), new State funding, BGE's Customer Assistance Maintenance Program ("CAMP"), the Fuel Fund and other private charitable organizations provide participating low-income customers with significant assistance in the payment of their electric bills.

Total energy assistance available from programs administered by the Office of Home Energy Programs ("OHEP", a

²³ The general prohibition against retroactive ratemaking by a public utility regulatory commission is grounded upon the principle that a regulated public utility is bound by its filed tariffs in effect at any point in time and must charge the rate set forth therein. *Baltimore County v. Baltimore*, 329 Md. 692, 705; *Public Service Commission of Maryland v. Delmarva Power & Light Co.*, 42 Md. App. 492; *Public Service Commission of Maryland v. Baltimore Gas & Electric*, 40 Md. App. 490, 512 (To order such a refund would be without any statutory authority therefor and would amount to the forbidden practice of retroactive ratemaking), see e.g. *Delmarva Power & Light* 59 FPC 13, 9 (1977) citing, *Montana-Dakota Utilities Company v. Northwestern Public Service Company*, 341 U.S. 246, 254, 258 (1951); *Indiana & Michigan Electric Company v. F.P.C.*, 502 F. 2d 336, 344 (CADC-1974); *F.P.C. v. Hope Natural Gas Company*, 320 U.S. 591, 618 (1944); *Payne v. Washington Metropolitan Area Transit Commission*, 415 F. 2d 901, 910 (CADC-1968) (The Federal Power Act forbids customers from retrieving excesses charged in the past).

division of the Department of Human Resources) for electricity and other fuels totaled approximately \$68 million for Fiscal Year 2005, but is anticipated to increase to approximately \$119 million for Fiscal Year 2007 starting July 1, 2006. This 75 percent increase in OHEP-administered energy assistance means that the typical low-income customers' monthly payment responsibility will be much less than the \$115 or \$134 presented on Attachment 1, just as their payment responsibility today is less than the \$67 shown on the same attachment. However, the Commission would like to have additional assurance that the additional projected funding will be adequate and that it will be scaled to address the specific price increases faced by low-income customers in the various utility service territories. OHEP normally files its proposed EUSP operations plan for the upcoming fiscal year in May of each year. The Commission expects that OHEP will address these issues comprehensively in this year's proposed plan and propose any program or legislative changes as necessary to adequately address new energy price levels (and likely increased program participation levels).

Comments at the April 26, 2006 hearing also highlighted two additional ways outside of the Plan that customers may be able to reduce their electric bills. In addition to the choice whether to opt-in to the Plan, customers also may choose to buy their power supply from a retail electric supplier or to take steps to reduce their electric consumption. Prior to the hearing, Washington Gas Energy Services and Pepco Energy Services had both announced competitive alternatives to BGE-provided SOS. At the hearing,

Commerce Energy announced its intention to join the list of residential retail competitors who will be making offers to BGE residential customers. In response to Commission questions, BGE clarified that customers who opt-in to the Plan will have the same opportunity to receive the benefits of the plan and to achieve further savings by shopping with a competitive retail supplier than customers who do not opt-in.

All customers also have the opportunity to reduce their electric bills by following the suggestions available from the Commission, OPC, Maryland Energy Administration and other sources of conservation information. As prices increase, the opportunity to save also increases. Savings can be achieved by reducing electric usage either through changes in usage behavior (turning off unused lights or changing the thermostat setting) or replacement of old appliances with higher efficiency appliances. The Commission expects that BGE will incorporate these two additional choices that are available to customers into their "You have a choice" customer education materials.

With this reiteration of the statutory provisions governing the Commission's actions, and explanation of why some of the proposals advanced in this proceeding are unlawful or otherwise unworkable, the Commission turns to a discussion of the amendments to the Plan adopted on March 6 that are proposed by the parties herein. As noted, BGE proposes to amend the Original Plan adopted in Order No. 80638 in several aspects, which amendments the Company believes improves the Original Plan while also maintaining the financial integrity of the Company. These proposed amendments

provide for an opt-in method of participation, a more gradual implementation of increased generation costs with a longer implementation and payback period, the calculation of carrying costs at the Company's actual rate of short-term borrowing, and the inclusion of a final bill for customers who participate in the Plan and then leave the service territory prior to full payment.

The proposed change to an "opt-in" methodology to participate in the rate stabilization program represents a change from the decision in Order No. 80638 that participation in the Plan constitutes the "default option", so that customers who choose not to participate must "opt-out." In our decision to choose the opt-out method in Order No. 80638, we noted that customers may become confused, particularly the most vulnerable, and we did not want anyone to miss the opportunity to participate if they so desire.²⁴ The Company amendment would change the participation to "opt-in", with the Company stating that customers indicate they do not want to be forced into a deferral plan and strongly prefer an opt-in enrollment. This sentiment is also strongly supported by the Office of People's Counsel, the legal representative of the residential customer class, who vigorously advocated for an opt-in method in the rate stabilization proceedings for other electric utilities²⁵ as well as this case, stating their outreach efforts reveal a strong customer preference for opt-in.

²⁴ Order No. 80638, at p. 39.

²⁵ Case No. 9058, regarding Potomac Electric Power Company and Delmarva Power and Light.

It is noteworthy that actions taken by the General Assembly indicate a preference for the opt-in approach by that body. On the final day of the 2006 General Assembly session, both the House and the Senate considered bills addressing the anticipated increases. The bills considered by both chambers contained the opt-in approach. The House of Delegates passed its version - HB 1712 - by a 128-9 vote. However, the Senate failed to move its version to final passage.

The Company also notes it will engage in an extensive customer education campaign, and a grace period for signing up will also be provided. The opt-in method is opposed by Baltimore City, which favors retention of the "opt-out" approach. The City contends that opt-out is a safer approach, as it would include customers unless they affirmatively do not wish to participate²⁶.

As noted in Order No. 80638, the plan can be implemented by the Company using either enrollment method. We originally chose participation as the default method to better ensure inclusion of customers, unless they do not wish to participate in the plan. However, the widespread publicity of this

²⁶ Not a single member of the Baltimore City delegation to the House of Delegates opposed HB 1712, which adopted an opt-in approach.

matter, along with the education campaign noted by the Company, with the provision of a reasonable grace period, now provides sufficient protections so that all customers should have full opportunity to be aware of the choices presented. Furthermore, we note that OPC strongly supports opt-in enrollment, confirming the comments of the Company that customer feedback favors such method. Finally, the General Assembly's actions on the final day of session expressed preference for opt-in after the Commission had approved an opt-out approach a month earlier, strongly suggesting that body preferred not to utilize the opt-out approach.

The Company represents that the education campaign will include radio and print ads, direct mailings to each customer, bill inserts, web and IVR (interactive voice response) notices, outreach events, and customer representative interaction. The enrollment period will run from May 15-June 23, 2006, with a grace period for two billing cycles (which will extend to near mid-September 2006)²⁷.

Upon consideration of the record, we find that the enrollment method should now be changed to "opt-in", which the record indicates is supported by the majority of parties and comports with the consensus view of the customers, according to the record. Furthermore, the extensive steps to be taken by the Company for customer education and enrollment, including the

²⁷ Customers enrolling during the grace period will have re-calculation of bills back to July 1, 2006, according to the Company.

provision of the grace period, satisfies our prior concerns and provides sufficient protections so that customers will become sufficiently aware of the program and not miss their opportunity to join. Accordingly, we believe that an opt-in enrollment is now the better method and will be adopted.

The proposed amendments also provide a more gradual implementation with a longer payback period. As noted, the Original Plan provides for a 21 percent increase in July 1, 2006, with rates gradually rising to full market rates in March 2007. Therefore increases would be deferred for the eight-month deferral period of July 2006 through February 2007, with a 15-month recovery period from March 2007 through May 2008. The proposed changes would provide a more gradual implementation, with a four step increase as follows:

- (1) July 1, 2006 19.4 percent increase
- (2) January 1, 2007 5 percent increase
- (3) June 1, 2007 25 percent increase²⁸
- (4) January 1, 2008 Full market rates (estimated 9 percent increase)

The deferred balances from July 1, 2006 through January 1, 2008 would be paid on a usage basis (per kilowatt hour) from June 2007 through May 2009, so that the amendments extend the

²⁸ Estimated 25 percent on June 1, 2007, depending upon the SOS bids for 2007-2008, which also affects the full market rates on January 1, 2008.

plan to a three-year plan compared to the original two-year plan²⁹, with each plan providing an additional year payback for low-income customers.

These more gradual implementation changes are supported by the Company and Staff as improvements to the Original Plan, and no party has expressed opposition. We therefore find that the more gradual implementation and extended period of the proposed amendments should be adopted as proposed by the Company.

The Company's Amended Plan proposal includes charging carrying costs to program participants at the Company's actual short-term borrowing rates. The Commission is concerned that allowing the Company to charge interest to program participants will serve as a significant deterrent to participation. Many customers who should take advantage of the Rate Stabilization Plan, most particularly low-income customers and seniors on fixed incomes, may choose not to do so because they find the interest expense an unattractive feature of program participation. The Commission, therefore, will direct the Company to eliminate the carrying cost charges from its Amended Plan.

There is no question that the significant electric bill increases anticipated will cause an increase in BGE's customer credit and collections and uncollectible expenses in future years. This phenomenon occurs whenever utility rates increase. The

²⁹ Both the original plan and amended proposal would have a true-up at the end to ensure fairness by matching plan payments and costs.

dramatic nature of this year's increases in electric supply costs would tend to exacerbate the increased costs to the Company from customers who face difficulties paying their bills. These types of expenses have been consistently recognized by the Commission for years as legitimate costs of service that are passed through to customers in base rates. From the Company's perspective, in the short run these increased costs can add significant expense to the Company's cost of operations.

The Commission would expect that giving customers the option for a Rate Stabilization Plan should help mitigate some of these increased costs to the Company and its customers. Customers facing an immediate financial crunch due to higher energy costs will have the option of more gradual phase-in by enrolling in the Rate Stabilization Plan. If these same customers decline to participate in the plan, many will accrue high arrearages. In these situations, the Company is very often forced to write-down the customer's bad debt, or at a minimum, incur significant expense attempting to collect a bad debt.

For these reasons, the Commission believes the Company and all of its customers will benefit if customers, particularly low-income customers, choose to participate in the plan. As a means of eliminating a barrier to program participation, the Commission will order that interest charges be eliminated from the plan.

While the Commission in this order directs that interest charges be stricken from the Rate Stabilization Plan, the Commission recognizes that, absent consent from the Company, an

outright denial of carrying costs on a deferral would be of doubtful legality.³⁰ The Commission directs that the Company account for its accumulated deferred interest expense by other means. The Commission will treat the deferred interest expense amount as a regulatory asset, with an appropriate offset for savings from reduced customer credit and collection and uncollectibles expenses. The Commission will accept the Company's proposal to utilize its actual cost of short-term borrowing as the appropriate carrying cost, to the extent carrying costs exceed the reduction in uncollectibles.

Potential means of recovery may include a credit against potential "merger savings" in the event that Constellation is permitted to merge with FPL, which matter is currently pending in Case No. 9054. We note in this regard that the Commission will be considering the level of synergies which can reasonably be expected if the merger is approved, and we will consider the merits of flowing those savings through to customers as an appropriate merger condition, if the merger is approved. We will consider other possibilities as well.

Finally, the proposed amendments differ from the Original Plan by providing that participating customers who leave the service territory would receive a final bill based on their

³⁰ Re: Monongahela Power Co. v Alan R. Schriber, Case No. C2-04-084, 322 F.Supp. 2d 902; 2004 U.S. Dist., SD Ohio, Eastern Division. See also letter of Assistant Attorney General to the Honorable Leo E. Green dated December 16, 2005, See Attachment 2.

proportionate share of the deferred balance remaining. This differs from the Original Plan as the Company initially expressed difficulties regarding calculation of individual bills to such customers, and this deficiency was criticized by the Office of People's Counsel with respect to the initial plan. The proposal to now charge individual customers for their outstanding balances upon leaving the BGE system answers this legitimate concern raised by the Office of People's Counsel, and is not opposed by any party. It will therefore be adopted as a more fair method to hold customers responsible for their individual bills and deferred balances.

In conclusion, the Commission finds that the rate stabilization Plan, as modified herein, shall be accepted as in the public interest to allow residential customers the opportunity to opt-in for a more gradual implementation of market rates.

IT IS, THEREFORE, this 28th day of April, in the year Two Thousand Six, by the Public Service Commission of Maryland,

ORDERED: (1) That a rate stabilization plan for residential customers of Baltimore Gas and Electric Company, as proposed in the Company's Amended Plan and as modified herein, is hereby adopted.

(2) That Baltimore Gas and Electric Company shall file new tariffs to implement the plan adopted herein, specifically eliminating the carrying costs.

(3) All motions not specifically granted are denied.

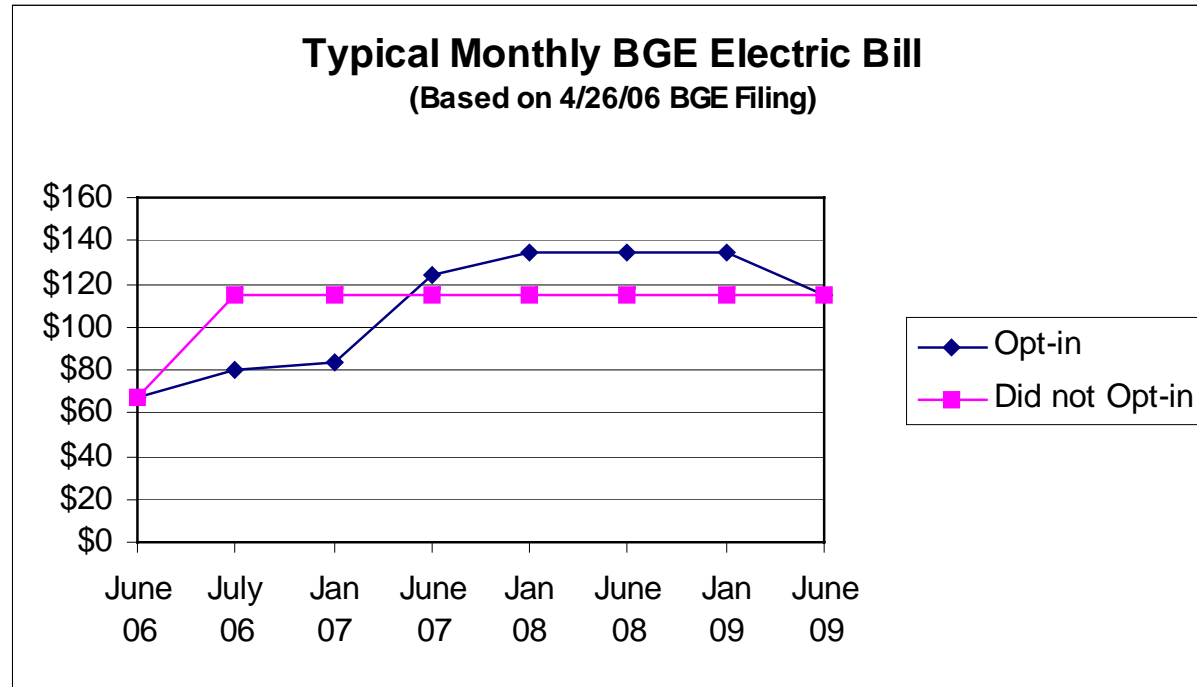
/s/ Kenneth D. Schisler

/s/ Allen M. Freifeld

/s/ Karen A. Smith

/s/ Charles R. Boutin

Commissioners



	June 06	July 06	Jan 07	June 07	Jan 08	June 08	Jan 09	June 09
Opt-in	\$67	\$80	\$84	\$124	\$134	\$134	\$134	\$115
Did not Opt-in	\$67	\$115	\$115	\$115	\$115	\$115	\$115	\$115

Bills on and after June-07 assume no change in SOS price compared to July-06

Bills do not include possible merger related credit or any other change in non-SOS rates compared to current non-SOS rates

This example is not applicable to low-income customers. Amount due on customer bills for low-income customers receiving energy assistance (EUSP, MEAP or another program) will be significantly lower than amounts shown above and repayment period for low-income Opt-in customers stretches over three years rather than the two shown above.