

**ORDER NO. 87226**

IN THE MATTER OF THE APPLICATION OF  
COLUMBIA GAS OF MARYLAND, INC. FOR  
AUTHORITY TO INCREASE RATES AND  
CHARGES PURSUANT TO THE “MAKE-  
WHOLE” PROVISIONS OF SECTION 4-207 OF  
THE PUBLIC UTILITIES ARTICLE

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9390  
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Issue Date: November 4, 2015

In this Order we affirm the Proposed Order issued by the Public Utility Law Judge (“Judge”) on October 16, 2015 authorizing a revenue increase requested by Columbia Gas of Maryland, Inc. (“Columbia” or “the Company”). We deny the Maryland Office of People’s Counsel’s (“OPC”) appeal with regard to Columbia’s executive stock compensation plan but place the Company on notice that all future expenses for executive incentive plans must be strongly and clearly related to ratepayer benefit in order to receive recovery.

On October 16, 2015, the Maryland Public Service Commission’s (“Commission”) Judge issued a Proposed Order authorizing a revenue increase for Columbia in the amount of \$542,314. Included in the Judge’s authorized proposed revenue increase was one-half of the expense of Columbia’s executive stock compensation plan. OPC noted an appeal of the Proposed Order pursuant to Section 3-113(d)(2) of the Public Utilities Article, Annotated Code of Maryland (“PUA”). By this Order, the Commission affirms the Proposed Order.

## **I. PROCEDURAL HISTORY**

On August 7, 2015, Columbia submitted an application to the Commission seeking authority to increase the Company's rates and charges, pursuant to the "make-whole" provision of §4-207 of PUA ("Application"). The Company also filed pre-filed testimony in support of the Application and proposed revised tariffs with an effective date of November 5, 2015.

By Order No. 87117 issued on August 12, 2015, the Commission docketed Case No. 9390, to consider the Application and delegated the matter to the Judge to conduct proceedings. OPC and the Commission's Technical Staff ("Staff") submitted direct testimony, and thereafter the parties submitted rebuttal testimony.

On September 15 and September 23, 2015, evening hearings for public comment were held in Cumberland and Hagerstown, Maryland, respectively. Evidentiary hearings for cross-examination of the witnesses were held at the Commission's offices in Baltimore, Maryland on September 21-22, 2015. The parties filed briefs on September 28, 2015, and reply briefs on October 2, 2015.

On October 16, 2015, the Judge issued his Proposed Order. OPC filed a Notice of Appeal and Memoranda on Appeal on October 20, 2015. A Reply Memorandum was filed by Columbia on October 23, 2015.

## **II. POSITIONS OF THE PARTIES ON APPEAL**

OPC has appealed the portion of the Proposed Order that allows Columbia to recover one-half of the expense for its executive stock compensation plan.<sup>1</sup> OPC asserts that Columbia should not recover anything for that plan since the Company failed "to meet

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<sup>1</sup> Memorandum on Appeal of the Office of People's Counsel ("OPC Memo"), p.1.

its burden of proof regarding clear benefit to ratepayers and necessity of compensation to bring covered employees' and directors' compensation to market rates.”<sup>2</sup> According to OPC, in a prior case, the Commission denied a public utility company's request to recover a benefit given to senior executives when the public utility company failed to provide proof of a clear relationship between that employee benefit and the actual benefit to the ratepayer.<sup>3</sup> Therefore, OPC asks the Commission to reverse the Proposed Order regarding the revenue increase related to one-half of the expense for Columbia's executive stock compensation plan.

Columbia opposes OPC's appeal and supports the Proposed Order as is. In its Reply Memorandum, Columbia reiterates that its executive stock compensation plan benefits ratepayers “through hiring and retaining quality executives” and is similar to that of Washington Gas and Light Company's (“WGL”) executive long-term incentive plan discussed in *Re Washington Gas Light Co.*, 102 Md. P.S.C. 332, 352 (2011). In that case, the Commission allowed WGL to recover one-half of its expenses to its executive long-term incentive plan.<sup>4</sup> The Company also notes that its current stock compensation plan was approved for 100 percent recovery in rates in its last base rate case, Case No. 9316.<sup>5</sup>

### **III. DISCUSSION AND FINDINGS**

As we have stated previously, a utility “has the burden of proof to justify any costs for which it seeks recovery from ratepayers.”<sup>6</sup> Without a showing that a cost is related to a benefit to ratepayers, the Commission does not allow a utility to recover such costs.

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<sup>2</sup> *Id.* at 3.

<sup>3</sup> *Id.* at 3-4 (Citing to *Re Baltimore Gas & Electric Co.*, 104 Md. P.S.C. 64, 79 (2013)).

<sup>4</sup> Initial Brief of Columbia Gas of Maryland, Inc., p.3-5.

<sup>5</sup> *Id.* at 4.

<sup>6</sup> *Re Potomac Elec. Power Co.*, 103 Md. P.S.C. 293,331 (2012).

In this case, the Judge and Columbia have interpreted our precedent in *Re Washington Gas Light Co.*, 102 Md. P.S.C. 332, 352 (2011) to mean that a public utility can recover one-half of its expenses from an executive long-term incentive plan based primarily upon shareholder return and interests but which also benefits the utility's customers by attracting and retaining outstanding executives to run the company. However, our holding in that case was that Staff had "failed to offer sufficient reasons to exclude SERP expenses from the cost of service".<sup>7</sup> The Commission continues to place the burden of proof on public utility companies to justify any cost for which it seeks recovery from ratepayers, and in order to receive recovery in rates, companies must show that such expenses are prudent and related to ratepayer benefits.

In this instance, the Commission will not disallow Columbia's recovery of one-half of its executive stock compensation plan expense sought in this rate case. Similar to employee activity costs, executive benefits may improve "morale (and possible resulting improvements in productivity) benefit[ing] both shareholders and ratepayers, but . . . must be within careful limits if recovery from ratepayers is sought."<sup>8</sup> However, the Commission places Columbia on notice that in its next base rate case, expenses for executive incentive plans should include metrics related to customer benefits in order to receive recovery.

**IT IS THEREFORE**, this 4<sup>th</sup> day of November, in the year Two Thousand and Fifteen, **ORDERED**: (1) That the Proposed Order of the Public Utility Law Judge issued on October 16, 2015 is hereby **AFFIRMED**;

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<sup>7</sup> 102 Md. PSC at 353.

<sup>8</sup> *Re Baltimore Gas & Electric Co.*, 104 Md. PSC 64, 79 (2013).

(2) That Columbia Gas of Maryland, Inc. is authorized, to file revised tariffs for an increase in revenues of \$542,314 in accordance with the findings in the Proposed Order dated October 16, 2015 and Public Utilities Article§4-207(b)(6)(i); and

(3) That all motions not granted herein are DENIED.

*/s/ W. Kevin Hughes* \_\_\_\_\_

*/s/ Harold D. Williams* \_\_\_\_\_

*/s/ Lawrence Brenner* \_\_\_\_\_

*/s/ Anne E. Hoskins* \_\_\_\_\_

*/s/ Jeannette M. Mills* \_\_\_\_\_

Commissioners