ORDER NO. 87695

IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR ADJUSTMENTS TO ITS ELECTRIC AND GAS BASE RATES	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND _____ CASE NO. 9406 _____

Issue Date: July 29, 2016

ORDER ON PETITIONS FOR REHEARING

On June 30, 2016, Baltimore Gas and Electric Company ("BGE") filed a Petition for Rehearing ("BGE Petition") of Maryland Public Service Commission ("Commission") Order No. 87591 issued on June 3, 2016 (Errata to Order No. 87591 issued June 6, 2016) (together, the "Order") in this proceeding. On July 5, 2016, Maryland Office of People's Counsel ("OPC") filed a Petition for Rehearing ("OPC Petition") of the Order. Both Petitions were filed pursuant to § 3-114 of the Public Utilities Article of the *Annotated, Code of Maryland* ("PUA") and Code of Maryland Regulations ("COMAR") 20.07.02.08.

I. BACKGROUND AND STANDARD OF REVIEW

A petition seeking to reverse or modify an order of the Commission[1] shall allege the facts and circumstances which have arisen after the hearing or order which justify the reversal or modification; or the consequences resulting from compliance with the order which justify or entitle the applicant to the reversal or modification. COMAR 20.07.02.08.D.(2). On July 11, 2016, the Commission issued a Notice of Request for

[1] The BGE Petition sought modification of Order No. 87591. Although the OPC Petition did not specifically state that OPC was seeking to modify the Order, if the Commission were to now adopt the findings of fact OPC already urged, the necessary result would be modification of the Order.

Comments establishing a deadline of July 25, 2016 for Parties to file comments containing such facts or circumstances which have arisen after the hearing or order, or such consequences resulting from compliance with the order, which justify modification of Order No. 87591 with respect to: (1) BGE's proposal at page 25 of the BGE Petition to offset the rate base reduction for disallowance of a return on the unamortized balance of retired legacy meters for accumulated deferred income taxes (ADIT) of $18.8 million and $0.9 million for electric and gas Retired Legacy Meter balances, respectively; (2) BGE's proposal at page 29 of the BGE Petition that it be allowed to recover 25% of its opt-out costs; or (3) other issues contained within either Petition.[2]

The U.S. Department of Defense and All Other Federal Executive Agencies ("DOD/FEA") filed Comments in response to the Petitions for Rehearing on July 20, 2016. On July 25, 2016, Comments were filed by BGE, OPC, The Mayor and City Council of Baltimore (the "City"), the Maryland Energy Group ("MEG"), Zayo Group, LLC, CenturyLink Communications, LLC, Comcast of Baltimore City, LLC, Crown Castle NG Atlantic LLC, and its subsidiary 24/7 Mid-Atlantic Networks, FiberLight, LLC, Level 3 Communications, LLC, and its affiliates Broadwing, LLC, WilTel Communications, LLC, TelCove Operations, LLC, and Level 3 Telecom of Maryland, LLC, and Quantum Telecommunications, Inc. (collectively, "Communications Providers"), and Commission Staff ("Staff").

[2] In its filed Comments, OPC contends that although it did not specify which subsection of COMAR was applicable to the OPC Petition, subsection C of COMAR 20.07.02.08 could be applicable. We note that although OPC claims to have alleged errors of law and fact in its Petition, we fail to see any actual alleged errors of law; instead, OPC alleges the Commission erred in many of its factual findings. Thus, impliedly OPC wanted the Commission to not only rehear OPC's evidence but also to modify the factual findings that OPC found to be erroneous. Harmonizing subsections C and D of COMAR 20.07.02.08, as OPC says we must, we requested comments pertaining to new facts or circumstances that would justify modification of Order No. 87591.

II. BGE PETITION FOR REHEARING

A. Procedural Argument

BGE makes an initial argument that the Commission *sua sponte* adopted a number of positions never requested by any party, and BGE was offered no opportunity to defend itself against these positions or to present evidence to the Commission to counter such positions. BGE alleges that it was denied its statutory rights, and that the Commission failed to follow the practice for Commission proceedings as delineated in the Public Utilities Article. BGE contends that the Commission's decision was made using an unlawful procedure that violated PUA §3-107 (1) and (2). Under subsections 1 and 2 of PUA §3-107, a party in a proceeding before the Commission is entitled to "summon witnesses, present evidence, and present argument" and "conduct cross-examination and submit rebuttal evidence." BGE maintains that it was not provided such opportunity as to the issues decided *sua sponte*. Lastly, BGE claims that because the Commission's *conclusions* must be based on evidence in the record pursuant to PUA §3-113(a)(1), there must also be evidence on the precise *positions adopted* by the Commission.

A public service company must charge just and reasonable rates for the regulated services that it renders. PUA §4-201. A "just and reasonable rate" means a rate that:

> (1) does not violate any provision of [the PUA];
> (2) fully considers and is consistent with the public good; and
> (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair value of the public service company's property used and useful in providing service to the public.
> PUA §4-101

The Commission is charged with setting just and reasonable rates of public service companies. PUA §4-102(b). In order to carry out this statutory duty, the Commission

institutes proceedings to consider whether the rate proposed by the public service company is a just and reasonable rate. PUA §4-204(b)(1). The Commission considers the evidence presented and the legal argument of parties to a rate case, and arrives at a final decision as to what constitutes just and reasonable rates of the public service company.

In its Petition, BGE has suggested that any decision at which the Commission arrives must be based directly on the position of a party in the case. BGE offers no support for this proposition and indeed none exists. Although it is true that the Commission's final decision is often comprised of various parties' positions with respect to particular issues, there is nothing in the Public Utilities Article that dictates that the Commission is restricted to merely adopting a party position. The Commission is entitled, and in fact required, to reach a decision based on what the Commission determines to be a just and reasonable rate. The Commission need not adopt a position or make a finding limited exclusively to the positions taken by the parties, as long as the decision is based on the record. While there needs to be evidence in the record as to the issue being decided, it is the task of the Commission to determine what evidence in the record it finds credible and to then reach an appropriate conclusion based on that evidence; there is no requirement that the record include the ultimate determination itself.

BGE conflates two concepts; the concept of evidence in the record on the issue generally, with the concept of evidence in the record of the ultimate treatment adopted by the Commission. For example, BGE argues that no party to the proceeding requested or proposed that the Commission reject the Company's proposed Operating Income Adjustment 23 and Rate Base Adjustment 6 and thus implications of that approach were never explored. BGE claims that no party witness testified that the Commission should

reject the Company's proposed Operating Income Adjustment 23 and Rate Base Adjustment 6 and thus there existed no witness that BGE could cross-examine.[3] BGE's misconstrued reading of PUA §3-107 (2) would constrict the Commission's determinations to only those for which there was a witness to be cross-examined *as to the Commission's exact decision*. BGE's position would require that the Commission rubber stamp all expenses proposed by a utility in a rate case in which no third party intervened, a result clearly not contemplated by the Public Utilities Article.[4]

Instead, PUA §3-112, entitled Burden of Proof, provides in subsection (b):

> **Rate changes**
> (b) In a proceeding involving a temporary or permanent new rate, or a temporary or permanent change in rate, the burden of proof is on the proponent of the new rate or change in rate.
> PUA §3-112(b).

The Commission has cited the burden of proof as set forth in PUA §3-112 in numerous cases. *See, e.g., Potomac Electric Company*, 104 Md. PSC 292, 328 (2013); *Potomac Electric Power Company*, 103 Md. PSC 293, 331 (2012); *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to Its Electric and Gas Base Rates*, 104 Md. PSC 653, 678 (2013). BGE clearly had the burden of proof to support its requested rate increase, including its proposed Operating Income Adjustment 23 and Rate

[3] In Operating Income Adjustment 23, BGE proposed regulatory asset amortization of the projected amounts deferred in the Smart Grid regulatory asset for the period December 2015 through May 2016, representing the time after the test year but before the effective date of the new rates. Relatedly, Rate Base Adjustment 6 reflects the thirteen-month average impact of the Smart Grid net regulatory asset as of May 2016, the first full month prior to the rate-effective period.
[4] See PUA §§ 2-112 and 2-113.

Base Adjustment 6. The fact that no party made the specific recommendation[5] that the Commission reject the Company's proposed Operating Income Adjustment 23 and Rate Base Adjustment 6 did not somehow alleviate BGE of its burden, and prevent the Commission from considering on its own whether to allow or disallow the adjustments. The Commission cannot be said to have acted outside its statutory authority in considering whether to allow or disallow the adjustments as part of its necessary determination of just and reasonable rates in this case.

BGE presented evidence in support of its proposed adjustments through written testimony of Company Witness Vahos. Thus there is substantial evidence in the record on the issue of the Company's proposed Operating Income Adjustment 23 and Rate Base Adjustment 6. The Commission was not compelled to agree with Witness Vahos absent the express disagreement of another party. There is no requirement that there be substantial evidence on the record of the exact treatment the Commission determines to be just and reasonable. The Commission reviewed the testimony of Witness Vahos, utilized its expertise, and determined that just and reasonable rates in this case did not include the Company's proposed adjustments. BGE's argument that the Commission's determination is somehow unlawful because there existed no witness that BGE could cross-examine as to disallowance of the proposed adjustments unduly restricts the Commission's options as fact finder.

[5] OPC, in particular, contested BGE's recovery of its AMI costs in general, which encompasses OIA 23 and RBA 6, so it is not accurate to state that the adjustments were uncontested. OIA 23 and RBA 6 were listed under 'Contested Adjustments' on the Comparison Chart of Party Positions filed by Staff on March 25, 2016 (Dkt. Item No.59). The heart of this rate case proceeding was cost recovery related to AMI. Therefore, it is disingenuous of BGE to suggest that it was not on notice that disallowance of its proposed adjustments related to AMI was not a possibility.

Similarly, BGE argues that the Commission should not be permitted to determine whether the expense associated with the increased conduit lease fee is known and measurable[6] based on the evidence presented and the Commission's own experience and expertise. Under BGE's theory of the Commission's statutory duties, the Commission was compelled to find the expenses known and measurable simply because no party argued otherwise. We do not believe its statutory duty to be so narrowly defined. Additionally, BGE's proposed rider mechanism, to which some parties acquiesced, is actually unusual treatment for ordinary expenses; in contrast, the Commission's decision to treat the conduit fees like an ordinary expense, allowing only those which the Company claimed on its books during the test year, is consistent with more typical ratemaking.[7]

BGE contends that with respect to the $16.6 million in Smart Grid project costs that the Company stated were related to customers affirmatively opting out of smart meter installations and customers who were non-responsive to BGE's outreach efforts, it never had the opportunity to defend its costs. However, BGE, as the party seeking a rate increase, had the burden of supporting all of the costs that it sought to recover from ratepayers, including this cost that was specifically discussed at the hearing. Moreover, it was clear from Order No. 83531 in Case No. 9208, that a prudency review would be conducted as part of cost recovery.[8] BGE seems to intimate that no party proposed that these costs should be disallowed because there was no evidence in support of such a

[6] We interpret "necessary and proper" expenses under PUA §4-201(3) as requiring expenses to be known and measurable.

[7] As the Commission noted, the prior conduit lease fee has been treated as an ordinary expense, even though such amount has not been fully spent by the City in recent years. Order No. 87591, n. 458.

[8] At page 39 of Order No. 83531, the Commission stated: "[o]ur recognition of a regulatory asset is not an advance determination that all costs related to the Initiative are prudent. We recognize that "prudent" does not mean "clairvoyant" or "perfect," and that a proper prudency review should not subject the Company to an unfair, *post hoc* nickeling-and-diming. But we also will not deem any costs as "prudent" in advance – the appropriate time to determine prudence is when recovery of the regulatory asset is sought."

determination. However, to say the record in this proceeding is that customers have overwhelmingly accepted smart metering devices is inaccurate given testimony regarding BGE's high rate of opt-out (Tr., p. 47), as well as OPC witnesses' testimony on customer satisfaction. In fact, there is evidence in the record to counter BGE's claim that its increased opt-out costs were solely caused by the Commission.[9]

B. Substantive Arguments

In its Petition for Rehearing, BGE requests that the Commission reconsider several of its decisions in the Order. First, BGE contends that the Commission's rejection of the Company's proposed Operating Income Adjustment 23 and Rate Base Adjustment 6 must be modified or else BGE will have to write off $32.4 million against earnings related to post-test year Smart Grid costs. Although BGE's accounting treatment of the Commission's rejection of its proposed operating income and ratemaking adjustments may indeed be a "consequence[s] resulting from compliance with the order" under COMAR 20.07.02.08.D.(2), it is not in the nature of a consequence which would justify or entitle BGE to its requested modification; BGE has not alleged such a consequence was unforeseen, or provided evidence that the alleged detriment is a mandatory consequence. There may be alternatives to BGE's immediate write-off that would mitigate any alleged detriment.

In its Petition, BGE quotes Order No. 83531, wherein the Commission authorized BGE to: "establish a regulatory asset for the AMI Initiative that may include the incremental costs to implement the AMI Initiative, as well as the net depreciation and amortization costs relating to the meters, and an appropriate return for those costs, and at

[9] *See* below, at n. 17.

the time that the Company has delivered a cost-effective AMI system, the Company may seek cost recovery into base rates." BGE interprets this language in a manner that supports its proposed adjustments. We interpret this language to mean that BGE was authorized to establish a regulatory asset through the time that the Company delivered a cost-effective system. When the Company filed its Application in this case, it declared that it had delivered a cost-effective system as of the end of the test year, November 30, 2015.[10] Order 83531 does not state that the Company would earn a post-test year return after such time as it had delivered a cost-effective system, and we do not find merit in BGE's argument that it is somehow prevented from being "made whole."[11]

Consistent with COMAR 20.07.02.08, the Company alleges that the consequences resulting from compliance with the Commission's decision to deny recovery of post-test year smart grid costs justifies or entitles BGE to a reversal or modification of our Order with respect to this issue. Notably, the Company alleges that compliance with our Order's directive to treat these post-test year smart grid costs as "normal expenses" will actually *increase* rates for customers, as compared to recovery through a regulatory asset mechanism spread out over time.[12] Further, BGE contends that compliance with our Order will cause it to write-off $32.4 million against earnings related to post-test year smart grid

[10] Commissioners Williams and Richard dissented from Order 87591's finding that the AMI system was cost effective.

[11] BGE's argument that is prevented from being made whole, to the extent it should be considered at all, is negated by BGE's acknowledgement that it would be "made whole" if it were to file a base rate application with a test year including December 2015 through May 2016. Moreover, as the Commission noted, OIA 22 effectively provides for an appropriate amount of annual O&M expenses in the rate effective period (Vahos Direct at 12) meaning that BGE will recover its annual O&M expenses based on actual 2015 expenses going forward even if BGE does not file a rate case for over a year.

[12] BGE Petition at 14.

costs, contravening the regulatory asset mechanism established by the Commission six years ago in Order No. 83531.[13]

We concur with the Company that the alleged consequences of our Order, specifically relating to ratepayer impacts stemming from the potential future recovery of post-test year smart grid costs, do not correspond to our intent with respect to this matter.[14] It *was* our intent, as stated in Order No. 87591, to reject recovery of BGE's post-test year smart grid costs in the instant proceeding "given the historical test year approach" invoked by this Commission.[15] It was *not* our intent, however, to issue this denial in a manner that could result in potentially higher ratepayer impacts than would otherwise accrue in a future base rate proceeding. While we continue to find that the allowance of post-test year expenses is an exception to the rule – and one that was not justified in the instant proceeding – we are persuaded that a modification to our prior directive is warranted insofar as to allow the deferral of these same post-test year smart grid costs in a regulatory asset. Rather than be required to expense these costs as regular expenses, we therefore modify our Order to instead permit BGE to defer these costs in a new smart grid regulatory asset[16] so that it may properly seek recovery in a future base rate proceeding.[17] As confirmed by the Company, the deferral of these six months of smart grid costs will not

[13] *Id.* at 12-13.
[14] Commissioner Hoskins does not join in the decision to rehear denial of recovery of post-test year smart grid costs pursuant to COMAR 20.07.02.08.
[15] Order No. 87591 (Errata) at 71.
[16] While this new smart grid regulatory asset is structured comparably to that established by Order No. 83531, it is restricted to the post-test year Smart Grid Initiative costs identified in the instant proceeding. Further, we reserve judgment on whether a return on this new regulatory asset is appropriately included; such a burden is borne by the Company at the time it seeks recovery.
[17] Nothing in Order No. 87591 or in today's modification should be construed to relieve BGE of its burden to demonstrate the prudency of these post-test year smart grid costs as a condition precedent to recovery in a future base rate proceeding.

impact the rates customers pay as a result of the instant proceeding.[18] The deferral will, however, ensure that ratepayers can benefit from a more gradual recovery timeline associated with the ten year amortization of the smart grid regulatory asset, provided that the Company satisfies its burden in seeking recovery of these costs in a future base rate proceeding.

Second, BGE contends that the Commission is somehow disadvantaging BGE for acting in the best interests of its customers by challenging Baltimore City's decision to substantially increase the fee charged for use of its underground conduit system. While not true,[19] more importantly, such allegation does not meet the standard on a petition for rehearing. And although BGE alleges at page 19 of its Petition that the City Council has recently approved approximately $26 million in supplemental conduit operating and capital appropriations for City Fiscal Year 2016, that purported new fact does not address the Commission's central finding that the magnitude and timing of the "true up" renders the conduit fee unknowable at this time. Thus, BGE has not submitted new facts that might justify modification of Order No. 87591. To the contrary, our finding appears to be supported by information provided in the Comments filed by the Communication Providers. Regrettably this information was available during the pendency of this case (the Declaration of Patricia D. Kravtin was filed March 31, 2016), but was not brought to our attention.

Next, BGE argues that the Commission erred in its treatment of Smart Grid Operational Savings and that it has had to write off $31 million against earnings. This

[18] BGE Petition at 14.
[19] We expect BGE to act in the best interests of its customers by ensuring that none of its operating expenses that it seeks to recover are unreasonable given PUA §4-101's requirement that just and reasonable rates take into account only those expenses that are necessary and proper.

write-off is also not in the nature of a consequence which would justify or entitle BGE to its requested modification; BGE has not offered proof such a consequence was unforeseen. The remainder of BGE's argument is a review of information already contained in the record; no new facts are alleged to have arisen after the hearing or Order which would possibly justify modification of the Order.

Next, BGE contends that the Commission erred in disallowing BGE a return on the unamortized balance of retired legacy meters. The alleged consequence of the Commission's decision is a disincentive for all Maryland utilities to replace old assets with technologically superior assets. BGE made this argument both in written testimony and at the hearing in this proceeding, rendering this alleged consequence not the type of unforeseen and detrimental consequence which would justify modification of the Order.[20]

BGE is correct, however, that in footnote 322 of Order No. 87591, we recognized that the unamortized balances for the Retired Legacy Meters might be reduced for ADIT. However, because BGE had not provided the ADIT balances, we reduced rate base by the full unamortized Retired Legacy Meter balances in order to deny the Company a return on these assets. BGE has now provided the ADIT balances: $18.8 million and $0.9 million related to the unamortized retired electric and gas Retired Legacy Meter balances, respectively. While Staff has strong concerns about supplementing the record with ADIT information that was available, but not provided, during the hearings, OPC recognizes that

[20] While we note the two California Public Utility Commission decisions cited in BGE's Petition (relating to similar requests by San Diego Gas & Electric Company and Pacific Gas and Electric Company for returns on their legacy meters), we, like the Kansas Corporation Commission (the third case cited by BGE), find it inappropriate to allow a full return on both AMI and legacy meters. *See In the Matter of the Application of Kan. City Power & Light Co. to Make Certain Changes in Its Charges for Elec. Serv*., 324 P.U.R.4th 173 (2015); 2015 WL 5317635. Accordingly, even had BGE alleged sufficient consequence, we would decline to adopt BGE's alternative proposal to allow the Company a long-term debt return on its retired legacy meters.

the narrow ADIT issue related to legacy meters is "on a different footing." We grant rehearing with respect to this limited aspect of the retired legacy meter issue, and grant BGE's request that the retired legacy meter balances be reduced by the ADIT figures it has now provided. This results in an additional revenue requirement of $2,367,000 for electric, and $114,000 for gas.

Lastly, BGE would like us to reconsider our disallowance of recovery of $16.6 million in Smart Grid project costs that the Company stated were related to customers affirmatively opting out of smart meter installations and customers who were non-responsive to BGE's outreach efforts. On this issue, BGE's Petition fails to present any evidence or argument not considered by the Commission during the hearing in this proceeding.[21] In Order No. 87591, we found that BGE failed to satisfactorily anticipate and plan for customer demand for opt out: "BGE should have been able to better anticipate that some customers would want to opt out of having smart meters installed in their homes, which would have allowed the Company to have an appropriate strategy for dealing with those customers ahead of deployment."[22] BGE's argument on rehearing that the Commission improperly demanded "clairvoyance" of the Company is inaccurate and

[21] Chairman Hughes does not join the Commission's decision on this issue.

[22] Order No. 87591 at 68. Moreover, assuming *arguendo* the $16.6 million in costs "result[ed] from the smart metering device opt-out proceedings instituted by the Commission and resulting Commission decisions," the fact remains that BGE should have been able to better anticipate that some customers would want to opt out of having smart meters installed in their homes, which would have allowed the Company to have an appropriate strategy for dealing with those customers ahead of deployment. BGE blames increased costs on its inability to terminate service under COMAR. Company Witness Butts testified that BGE assumed it would have its normal COMAR rights to gain access to meters, and if BGE couldn't get access to meters (many Baltimore City customers had meters located indoors), BGE would go through a communication process that could lead up to and include termination. (Tr., p. 65). But Mr. Butts also testified that installation contracts were set up such that crews went house by house in a contiguous fashion (Tr., p. 65-66). Thus, even under BGE's original plan, it was going to have to pay contractors to go back, given that the communication process that could lead up to and include termination would have taken time. Thus, there is evidence that BGE's methodology was flawed from the beginning. But for BGE's initial flawed plan, the Commission's opt-out proceedings would not have had the impact on project costs BGE claims.

unpersuasive. As OPC provides in its Comments, customer opposition to smart meters, and the resulting demand for opt out, have been present since the inception of smart meter deployment nationwide.[23]

Alternatively, in an offer of compromise, BGE proposes that it be allowed to recover 25% of its opt-out costs, based on dividing the assumed rate of 1% by BGE's actual rate of 4%. We reject that proposal. As Staff points out, the 1% assumed opt-out rate was derived for purposes of determining appropriate opt-out fees, not for determining the allowed costs of smart meter deployment.[24] We do not believe the record in this case would necessarily support acceptance of this compromise over the objections of other Parties.

In view of our rulings herein, we need not consider BGE's suggestion that we consider modifications to the depreciable life of certain smart grid assets in order to offset any cost allowances requested by BGE. The evidence in this proceeding supported a 10-year depreciable life and there are no facts arising after the hearing or Order that have been alleged that would support modifying the Order to incorporate a 15-year depreciable life for any of the smart grid assets.

III. OPC PETITION FOR REHEARING

In its Petition for Rehearing, OPC claims that the Commission erred in finding that BGE's AMI or Smart Grid Initiative is cost-effective.[25] OPC further claims that the

[23] *See* OPC Comments on Rehearing at 15-16. OPC also observed that it filed comments as early as 2014 questioning BGE's AMI deployment, including its "excessive wait times and scheduling problems related to meter installs, as well as lackluster communication efforts." *Id*. at 16, citing OPC's June 17, 2014 Comments in Case No. 9208.

[24] Staff Comments on Rehearing at 7.

[25] OPC used the term "cost-effective" in its Petition. As explained in the Order, the proper term is "cost-beneficial" since the Commission is conducting a cost-benefit analysis that compares costs to benefits expressed in dollar values.

Commission over-compensated investors and ignored ratepayers by not lowering BGE's return on equity. Lastly, OPC notes that the Order is inconsistent with respect to the allocation of the authorized electric revenue increase.

OPC indicates that its Petition was filed pursuant to § 3-114 of the Public Utilities Article of the Maryland Annotated Code ("PUA") and COMAR 20.07.02.08. As set forth above, we decline to rehear the evidence already submitted. A modification of Order No. 87591 would require new facts to have arisen since the Order or consequences resulting from compliance that justify modification. However, the OPC Petition does not contain new facts that have arisen since the Order or set forth consequences resulting from compliance that would justify modification under COMAR 20.07.02.08.

Instead, OPC states that because this proceeding "was the Commission's first opportunity to examine BGE's comprehensive AMI program and its attendant issues, certain findings of the Commission warrant additional consideration..." OPC is asking the Commission to consider again the evidence that OPC already brought forth during the proceeding. OPC's argument that the Order "overcompensated investors and ignored ratepayers" in determining the proper return on equity repeats arguments it previously put forth. OPC's Petition on these two points does not meet either of the two tests required for reversing or modifying our Order, and we decline to rehear OPC's evidence which we already reviewed. The OPC Petition is therefore denied.

With regard to the section of our Order entitled "Assignment of Electric Rate Increase by Schedule," we stated "in step-one we adopt Staff's recommendations, based on the Company's 2014 ECOSS," whereby Staff "allocated 17 percent of its proposed

revenue requirement increase to Schedules R and RL."[26] This is in fact what the Commission did; we adopted Staff's recommendations. However, as OPC notes, the ordering provision with regard to the allocation of the authorized electric rate increase among rate classes is inconsistent with the discussion of that topic and Mr. Wallach's recommendation that the revenue allocation be among all rate classes, except Schedules T and PL, in proportion to each class's base distribution revenues under current rates.[27] In our consideration of this matter, we agreed with Mr. Wallach's observation that contrary to cost-causation principles, the BGE's 2014 ECOSS does not allocate Smart Grid Initiative costs to customer classes commensurate with the allocation of Smart Grid benefits to those classes. In doing so, we *recognized and gave effect to* Mr. Wallach's position in our analysis and consideration of Smart Grid benefits and also by limiting the residential customer charge adjustment in this case to an increase from $7.50 to $7.90 as opposed to $12.00 as proposed by BGE. With regard to the allocation of the electric rate increase among customer classes, we elected to allocate the revenue increase authorized in this case as recommended by Staff.

Therefore, we clarify that the statement noted by OPC: that we allocate the revenue authorized in this case among all rate classes, except Schedules T and PL, in proportion to each class's base distribution revenue, was incorrect. Instead, as intended, we authorized the electric revenue allocation in the manner recommended by Staff. By adopting Staff's recommendations, our decision in this case struck an appropriate balance among the rate classes while bringing all classes closer to the system-wide rate of return. Accordingly, the

[26] Order No. 87591 at 203-204.
[27] OPC Request for Rehearing at 19.

Company's Filing (which OPC notes follows the two-step approach recommended by Staff) is consistent with the revenue allocation we intended.

IT IS THEREFORE, this 29th day of July, in the year Two Thousand Sixteen, by the Public Service Commission of Maryland,

ORDERED (1) That the Petition for Rehearing filed by Baltimore Gas and Electric Company, is hereby granted in part and denied in part;

(2) That Baltimore Gas and Electric Company is hereby authorized, pursuant to § 4-204 of the Public Utilities Article, Annotated Code of Maryland, to file tariffs that shall increase electric distribution rates by no more than $2.367 million, that shall increase gas distribution rates by no more than $0.114 million, for service rendered on or after June 4, 2016, and that otherwise shall be consistent with the findings in this Order;

(3) That Baltimore Gas and Electric Company is directed to file tariffs in compliance with this Order, subject to acceptance by the Commission;

(4) That Order No. 87591 is hereby clarified as set forth herein and modified to permit BGE to defer Smart Grid incremental costs incurred between December 1, 2015 and May 31, 2016 in a new smart grid regulatory asset; and

(5) That the Petition for Rehearing filed by Maryland Office of People's Counsel is hereby denied.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Anne E. Hoskins

/s/ Jeannette M. Mills

/s/ Michael T. Richard

Commissioners