

ORDER NO. 87064

IN THE MATTER OF THE APPLICATION	*	BEFORE THE
OF WASHINGTON GAS LIGHT		PUBLIC SERVICE COMMISSION
COMPANY FOR AUTHORITY TO	*	OF MARYLAND
IMPLEMENT A STRATEGIC		
INFRASTRUCTURE DEVELOPMENT	*	_____
AND ENHANCEMENT PLAN AND		CASE NO. 9335
ASSOCIATED COST RECOVERY	*	2015 AMENDMENT
MECHANISM.		TO STRIDE PLAN
_____		_____

Issue Date: July 2, 2015

This matter comes before the Maryland Public Service Commission (“Commission”) on appeal by Washington Gas Light Company (“WGL” or “the Company”) of a Proposed Order of the Chief Public Utility Law Judge (“PULJ”) issued on May 27, 2015. Upon consideration of the record developed in this matter, and as more fully explained herein, the Commission hereby denies WGL’s request for approval of its proposed Transmission Programs 1, 2 and 4 under its STRIDE Law authority; provides clarification on the timing for Washington Gas Light Company’s submission of project lists; and provides clarification on the frequency with which Washington Gas Light Company may file its Meter Set project lists.

I. Procedural Background

On March 10, 2015, WGL filed an application for approval of a proposed amendment to its Strategic Infrastructure Development and Enhancement Plan (“STRIDE Plan” or “the Plan”) and associated cost recovery mechanism (“STRIDE Rider”) (collectively, “the Application”) pursuant to §4-210 of the Public Utilities Article (“the

STRIDE Law”).¹ The Company’s approved STRIDE Plan consists of four distribution plant replacement programs, Programs 1-4.² In the Application, WGL proposed to amend the Plan by adding distribution system Program 5, which includes subprograms 5A, 5B, and 5C, and four new transmission system programs (“Transmission Programs 1, 2, 3, and 4”).³

On May 27, 2015, the Commission’s Chief Public Utility Law Judge issued a Proposed Order which, among other decisions, conditionally approved Programs 5A, 5B, and 5C; rejected Transmission Program 1; and conditionally approved Transmission Programs 2, 3, and 4. On June 4, 2015, WGL filed a Notice of Appeal and Memorandum on Appeal (“Appeal Memo”),⁴ taking issue with the basis for the rejection of Transmission Program 1 and certain projects in Transmission Programs 2 and 4, and requesting clarification pertaining to the project lists that the Company is directed to submit as part of its STRIDE Plan. On June 26, 2015, the Commission’s Technical Staff filed a Motion for Leave to File Late together with a Reply Memorandum on Appeal.⁵ We grant Staff’s Motion for Leave to File Late since there is no prejudice to WGL as COMAR 20.07.02.13A provides only for a Memorandum on Appeal and a Reply Memorandum with no further responsive pleadings.

¹ Mail Log No. 164902.

² Order No. 86321, *In the Matter of the Application of the Washington Gas Light Company for Authority to Implement a Strategic Infrastructure Development and Enhancement Plan and Associated Cost Recovery Mechanism*, Case No. 9335 (May 6, 2014) (“WGL STRIDE Order”).

³ The Application contained other proposed amendments to WGL’s STRIDE Plan, none of which are at issue in the instant appeal unless otherwise noted.

⁴ Mail Log No. 169168.

⁵ Mail Log No. 170133. WGL does not oppose Staff’s Motion. Mail Log No. 170264.

II. Issues on Appeal

On appeal, WGL challenges the Proposed Order's rejection of Transmission Program 1 and certain projects in Transmission Programs 2 and 4. The rejection was based on the finding by the Chief PULJ that some of the infrastructure projects within the specified Programs are physically located outside of Maryland and therefore not eligible for cost recovery under the STRIDE Law. WGL disputes this finding, instead contending that the Programs are eligible.

The STRIDE Law allows for the concurrent recovery of costs incurred by gas companies when replacing or improving its existing infrastructure through a surcharge passed on to its customers. It was enacted to encourage gas companies to accelerate infrastructure safety changes by allowing for the swift recovery of qualified costs. Section 4-210(b) states, "It is the intent of the General Assembly that the purpose of this section is to accelerate gas infrastructure improvements *in the State* by establishing a mechanism for gas companies to promptly recover reasonable and prudent costs of investments in eligible infrastructure replacement projects separate from base rate proceedings." (emphasis added) The STRIDE Law goes on to address application requirements, cost recovery parameters, and factors to be followed by the Commission when considering a STRIDE Law filing.

WGL contends that the Proposed Order errs in finding that infrastructure replacement projects must be located in the State in order to be eligible under STRIDE Law for cost recovery through the STRIDE surcharge mechanism. The Company finds this interpretation of the STRIDE Law to be too restrictive, instead noting that §4-210(b) does not expressly state that *transmission* infrastructure improvements must be located in

the State in order to be eligible for cost recovery, and that the Programs at issue do satisfy the General Assembly's intent for gas utilities to accelerate enhanced infrastructure improvements "in the State."⁶ (Emphasis added.) In its Reply Memorandum Staff responds that the STRIDE statute must be read in its entirety ensuring that no words or phrases are rendered meaningless, including the legislative intent section.⁷

WGL also contends that the Proposed Order errs in finding that, with regards to the portions of Programs 1, 2, and 4 that are located outside of the State, the Company seeks approval of infrastructure replacement projects "over which the Commission has no authority to impose or enforce conditions associated with the project."⁸ The Company cites the STRIDE Law as well as the Public Utilities Article as a whole in support of its position that the Commission has jurisdiction over the out-of-State portions of the subject Programs.⁹ WGL asks the Commission to find that the infrastructure improvements located outside of the State are eligible for STRIDE cost recovery, that the Commission does have jurisdiction over the improvements, and to thereby approve the Company's Transmission Programs 1, 2, and 4 as proposed.

III. Commission Decision

As previously stated, the Proposed Order finds that cost recovery under the STRIDE law is available only for gas infrastructure improvements physically located "in the State."¹⁰ We agree, finding that §4-210(b) of the STRIDE Law clearly expresses the

⁶ Appeal Memo at 6.

⁷ Reply Memorandum at 5 – 6.

⁸ Appeal Memo at 7.

⁹ *Id.*

¹⁰ Proposed Order at 59.

legislative intent behind the statute. To be clear, gas companies are not precluded from making transmission infrastructure improvements beyond State lines; they simply cannot employ the STRIDE surcharge mechanism to recover costs associated with them. To interpret §4-210(b) any other way would be contrary to accepted principles of statutory construction,¹¹ and would render the words “in the State” meaningless.

WGL argues that no party disputes the Company’s proposed transmission infrastructure replacements will benefit Maryland gas consumers.¹² While that may be true, it is also irrelevant to the issue at hand, as infrastructure improvements must be located in Maryland to receive STRIDE cost recovery. The Company may include the appropriate Maryland-allocated share of out-of-state projects in the rate base in its next rate case, as has been the Company’s practice, but there is no basis to accelerate cost recovery for improvements that the General Assembly did not intend to make eligible under the STRIDE Law.

We need not address the Company’s claim that the Commission has jurisdiction over the portions of the infrastructure improvements that are outside the State of Maryland to resolve this appeal. The Proposed Order states that “the Commission has no authority to impose or enforce conditions associated with the [out-of-state] project.”¹³ We leave the question of the Commission’s authority to impose conditions on

¹¹ Mail Log #168740, Staff Reply Brief, May 21, 2015, page 3, quoting *Fisher v. E. Corr. Inst.*, 425 Md. 699, 706, 43 A.3d 338, 342-43 (2012) (“The process of statutory interpretation begins with the plain language of the statute, where we ‘read[] the statute as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory’.”); Oddly, WGL cites the following principle of statutory interpretation in support of WGL’s position: “We neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words the Legislature used or engage in forced or subtle interpretation in an attempt to extend or limit the statute’s meaning.” (WGL Brief at 5, fn. 15 (*quoting Taylor v. NationsBank, N.A.*, 365 Md. 166, 776 A.2d 645, 654 (2001))) *Id.*

¹² Appeal Memo at 6.

¹³ Proposed Order at 59.

transmission infrastructure improvements out-of-State to be decided in a matter directly involving that issue.

The second issue raised by WGL in its Appeal Memo pertains to the Company's allegation that the Proposed Order contains conflicting instructions regarding the Company's submission of project lists for conditionally-approved programs. WGL reads the Proposed Order to require the Company to file detailed project lists for the remaining years of the Five-Year Plan within 30 days of the final Order in this matter, which it finds contrary to the direction given in Order No. 86321 requiring proposed project lists for future years to be filed by November 15 of the preceding year.¹⁴

To the extent that any contradictory direction was given, we hereby provide clarification by stating that detailed project lists for the conditionally-approved programs for Calendar Year 2015 shall be filed by WGL with the Commission within 30 days of issuance of the final Order in this matter. Detailed project lists for Calendar Years 2016, 2017, and 2018 shall be filed by WGL with the Commission by November 15 of the preceding year.

The third and final issue raised by WGL in its Appeal Memo pertains to the Company's confusion over the flexibility with which it may file project lists for higher risk infrastructure. WGL reads the Proposed Order to require the Company to file Program 5A project lists annually, but also to allow the Company to file the project lists more frequently if warranted by survey results and ongoing risk analyses.¹⁵

¹⁴ Order No. 86321 at 6.

¹⁵ Appeal Memo at 3 and 4.

To the extent that the Proposed Order was unclear in this regard, we hereby provide clarification by stating that the project lists associated with conditionally approved Program 5A shall be filed by WGL with the Commission no less frequently than annually, and may be filed more frequently through the Commission's Administrative Meeting process. We note that more frequent filings are discouraged, reserved for rare circumstances, and only with the support of survey results and for the purpose of improving public safety.¹⁶ We also confirm that the Company is not required to complete the survey it is conducting in association with Program 5A before creating project lists for the Commission's consideration.

IT IS THEREFORE, this 2nd day of July, in the year Two Thousand Fifteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Proposed Order is affirmed in its denial of Transmission Program 1 and conditional denial of Transmission Programs 2 and 4 for the reasons stated therein;

(2) That project lists for the conditionally-approved programs for Calendar Year 2015 shall be filed by WGL within 30 days of issuance of this Order in this matter, and for Calendar Years 2016, 2017, and 2018, annually by November 15 of the preceding year; and

(3) That project lists for the conditionally approved Program 5A shall be filed annually with the Commission, may be filed more frequently but shall be done in rare

¹⁶ "As a general matter we disfavor the substitution of [STRIDE] projects during a Plan year..." Order No. 86321 at 10, and pages 7-10 generally.

circumstances; and may be filed prior to the completion of the survey WGL is conducting in association with Program 5A.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Lawrence Brenner

/s/ Anne E. Hoskins

/s/ Jeannette M. Mills
Commissioners