

**ORDER NO. 87264**

IN THE MATTER OF BALTIMORE  
GAS AND ELECTRIC COMPANY  
FOR AUTHORIZATION TO  
DEPLOY A SMART GRID  
INITIATIVE AND TO ESTABLISH A  
SURCHARGE MECHANISM FOR  
THE RECOVERY OF COST

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BEFORE THE  
PUBLIC SERVICE COMMISSION  
OF MARYLAND

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CASE NO. 9208

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**Issue Date: November 24, 2015**

On November 5, 2015, the Public Service Commission of Maryland (“Commission”) held a hearing in the above-captioned case to consider the limited issue of whether an interim adjustment to the \$11.00 recurring monthly fee paid by opt-out customers of Baltimore Gas & Electric Company (“BGE”) is appropriate given that recent opt-out levels are in excess of the 1% opt-out assumption utilized in the initial fee determination. After considering fully the record before us, we<sup>1</sup> find that an interim adjustment is warranted so that the monthly fee paid by BGE opt-out customers shall be \$5.50, effective with the January 2016 billing cycle.

In Order No. 86200, issued on February 26, 2014, we addressed, *inter alia*, the issue of cost allocation for residential and small commercial customers of BGE who opt

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<sup>1</sup> Commissioner Anne E. Hoskins concurs with this Order. Commissioner Harold D. Williams dissents from this Order. Both Commissioner Hoskins’ concurring statement and Commissioner Williams’ dissenting opinion are attached to this Order.

out of receiving a smart meter (“opt-out customers”). In that Order we said, “[W]e allocate to these opt-out customers the appropriate costs associated with their choice – a practice aligned with the traditional ratemaking principles of cost causation, and with consideration of the effect of those costs on ratepayers.”<sup>2</sup> After extensive hearings and a review of the record evidence, the Order directed opt-out customers of BGE to pay a one-time, up-front fee of \$75.00 (payable in three monthly installments) and a recurring monthly fee of \$11.00.<sup>3</sup> In establishing the two-part fee structure outlined in the Order, we assumed a 1% opt-out rate, which was both supported by the record and reflected a reasonable approximation of the experience of other states further along in their implementation.<sup>4</sup>

However, the most recent reports on the performance metrics associated with the deployment of BGE’s smart grid initiative reflect a current opt-out rate in the range of 3.8 – 4.15%.<sup>5</sup> Thus, we convened the November 5, 2015 hearing to consider whether the recent opt-out percentages reported by BGE warrant an interim adjustment to the monthly opt-out fee.<sup>6</sup> In response to our request for comments in advance of the November 5th hearing, BGE did not express an objection to the interim adjustment concept; although, the Company did suggest that if the Commission does make an interim adjustment, it should refrain from any further adjustments until such time that the opt-out percentage

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<sup>2</sup> Order No. 86200 (Feb 26, 2014) at 2.

<sup>3</sup> *Id.* at 5.

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

<sup>5</sup> ML#173205: *Case No. 9208 – Second Quarter 2015 Metrics Report of Baltimore Gas & Electric Company* (“BGE 2015 Q2 Report”) (Aug. 17, 2015) at 9; ML#175600: *Case No. 9208 – Supplemental Filing of Baltimore Gas and Electric* (Oct. 6, 2015).

<sup>6</sup> Order No. 87184 (Oct. 8, 2015) at 3.

stabilizes, thereby triggering the true-up process described in Order No. 86200.<sup>7</sup> To assist in the consideration of an interim adjustment, BGE provided estimated opt-out fees ranging from \$14.39 to \$4.26 based on opt-out percentages of 1.00 – 4.00%, respectively.<sup>8</sup>

The Maryland Office of People’s Counsel (“OPC”), Maryland Smart Meter Awareness (“MSMA”), and the Commission’s Technical Staff also filed comments in advance of our November 5, 2015 hearing. While MSMA maintained in its comments “that a hearing to adjust fees is not called for at this time,”<sup>9</sup> the organization did recommend that the opt-out fee be decreased in light of the reported higher opt-out rate should the Commission pursue an interim adjustment.<sup>10</sup> OPC similarly recommended a reduction in the monthly opt-out fee, so that following the interim adjustment, BGE opt-out customers would pay a \$3.51 recurring monthly charge.<sup>11</sup> Staff, however, advised against revising the monthly payment for BGE’s opt-out customers at this time, primarily because the Commission-approved protocol regarding non-responsive customers has been in place for only 6 months.<sup>12</sup> Instead, Staff recommended that the Commission direct BGE to file additional quarterly metrics in order to provide timely information regarding the alignment of opt-out revenues with opt-out costs.<sup>13</sup>

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<sup>7</sup> ML#177232: *Comments of Baltimore Gas and Electric Company on Opt-out Fee Adjustment* (“BGE Comments”) (Oct. 29, 2015) at 1.

<sup>8</sup> *Id.*

<sup>9</sup> ML#177223: *Comments of Maryland Smart Meter Awareness Before the Maryland Public Service Commission in Response to the Commission’s Notice of October 8, 2015* (“MSMA Comments”) (Oct. 29, 2015) at 2.

<sup>10</sup> *Id.* at 12.

<sup>11</sup> ML#177237: *Comments of the Office of People’s Counsel* (“OPC Comments”) (Oct. 29, 2015) at 10. OPC’s recommended monthly opt-out fee of \$3.51 assumed a 3.8% opt-out rate and adjustments to certain cost categories. See OPC Comments at 5-8.

<sup>12</sup> ML#177353: *Corrected Staff Comments Regarding the Opt-out Fee Structure for Baltimore Gas and Electric Company* (“Staff Comments”) (Nov. 3, 2015) at 6.

<sup>13</sup> *Id.*

## **Commission Decision**

As discussed at length in Order No. 86200, the number of customers that choose not to receive a smart meter is one of several variables that drive the costs attributable to opt-out customers. Some costs remain fixed regardless of the opt-out rate and represent incremental costs associated with requiring the utilities to maintain two parallel and redundant infrastructures.<sup>14</sup> For costs such as these, an increased number of opt-out customers represents a larger pool over which to divide the fixed costs and may contribute to a decrease in the monthly fee required to support an ongoing opt-out option.<sup>15</sup> Conversely, other costs attributable to a customer's decision to opt out of receiving a smart meter may in fact increase due to higher opt-out rates (*e.g.* meter reading time), particularly if the geographic distribution of those customers is varied across the utility service territory.<sup>16</sup> Nonetheless, we convened the November 5 hearing to consider an interim adjustment to the monthly fee on the basis of recent opt-out percentage trends only, and therefore decline to revisit the other contributing cost assumptions at this time.<sup>17</sup>

As stated in the notice convening the instant proceeding, the interim adjustment contemplated herein is separate and distinct from the true-up procedure outlined in Order

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<sup>14</sup> Order No. 86200 at 3.

<sup>15</sup> Not all of the fixed costs are covered by the \$75.00 up-front fee, the remainder being amortized over 10 years in the monthly fee. Order No. 86200 at 5.

<sup>16</sup> *Id.* at 4, 17-19.

<sup>17</sup> We similarly decline to revisit the cost categories of which the opt-out fees are comprised, given that Order No. 86200 addressed comprehensively this issue and because the notice convening our November 5, 2015 hearing did not contemplate any such adjustments to previously-approved cost categories. *See* Order No. 86200 at 19-25; Order No. 87184 at 1-3. We note, however, that the future true-up process required as a result of Order No. 86200 will address any misalignment that occurs between opt-out revenues and actual opt-out costs.

No. 86200, which will account for any imbalance in fees collected by BGE.<sup>18</sup> The true-up procedure outlined in our prior Order will account for the actual costs of providing the opt-out service as compared to the revenue generated by the collection of opt-out fees.<sup>19</sup> In furtherance of this objective, we adopt Staff's recommendation that BGE file additional quarterly metrics regarding the collection of opt-out revenues contrasted with the ongoing costs of providing the opt-out option<sup>20</sup> so that we may monitor closely the alignment of opt-out revenues and costs during the pendency of the opt-out percentage stabilization period.<sup>21</sup> The additional reporting metrics shall detail the quarterly and program-to-date costs of providing the opt-out option in the following categories: (1) information technology; (2) communications; and (3) meter reading.<sup>22</sup>

We do not adopt, however, the portion of Staff's recommendation in which Staff recommends the reporting of additional quarterly metrics *in lieu of* an interim adjustment to the monthly fee structure for BGE opt-out customers.<sup>23</sup> Rather, we find that an interim adjustment to the recurring monthly fee paid by BGE opt-out customers is warranted. Having found that such an interim adjustment is appropriate, the question then turns on which opt-out percentage rate to assume in the determination of the revised monthly fee.

According to BGE, opt-out enrollment likely peaked in the September 2015 timeframe, and the Company is now beginning to realize a decline in the number of opt-

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<sup>18</sup> Order No. 87184 at 2, note 7.

<sup>19</sup> *Id.* at 17-19.

<sup>20</sup> *See* Staff Comments at 6.

<sup>21</sup> Order No. 86200 (at 3) stated that "[t]his one-time true-up will occur once the opt-out rate has stabilized in all service territories – projected by Staff to occur within 12-18 months of the opt-out fee implementation."

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

out customers;<sup>24</sup> in fact, the opt-out percentage decreased by approximately 0.05% between September 30 (the close of the third quarter metrics reporting) and our November 5 hearing.<sup>25</sup> BGE confirmed that it anticipates a further decline in the opt-out rate moving forward as the non-responsive customers that have been enrolled in the opt-out program seek to reverse that decision.<sup>26</sup> In support of this assertion, the Company's most recent quarterly metrics report indicates that the 47,686 appointments scheduled during the third quarter of 2015 (relating to the installation of an AMI device at an inaccessible meter location) yielded total installations of 59,251 smart meters and gas modules during that timeframe.<sup>27</sup> An approximate 20% turnover in customers each year provides additional opportunities to visit a customer's premise to complete a smart meter installation.<sup>28</sup> Such data points are indicative of a continued decline in the opt-out rate, especially given that 2.3% of the 4.1% opt-out customers as of our November 5 hearing were enrolled in the opt-out program due to their status as non-responsive customers following completion of BGE's enhanced 15-step communication protocol.<sup>29</sup>

We note, however, that the installation of smart meters at inaccessible locations on a non-responsive customer's premise is contingent on the effectiveness of BGE's educational initiatives and enhanced 15-step communication protocol. In prior orders we

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<sup>24</sup> Tr. at 52 (Butts/Chairman Hughes).

<sup>25</sup> At the close of the third quarter of 2015, BGE reported a 4.15% opt-out rate. *See* ML#175600: Case No. 9208 – Supplemental Filing of Baltimore Gas and Electric (Oct. 6, 2015). However, BGE Witness Butts testified that the opt-out rate declined to approximately 4.1% as of the November 5, 2015 hearing. *See* Tr. at 52.

<sup>26</sup> Tr. at 52 (Chairman Hughes/Butts).

<sup>27</sup> ML# 177842: *Case No. 9208 – Third Quarter 2015 Metrics Report of Baltimore Gas & Electric Company* (“BGE 2015 Q3 Report”) (Nov. 16, 2015) at 11. This trend is a continuation of that realized in the second quarter of 2015, when BGE installed 84,634 smart meters and gas modules as a result of 42,017 scheduled appointments. *See* BGE 2015 Q2 Report at 9. Program-to-date this ratio is 234,646 devices installed as a result of 284,329 scheduled appointments. BGE 2015 Q3 Report at 11.

<sup>28</sup> Tr. at 52-53 (Butts).

<sup>29</sup> Tr. at 53 (Butts).

acknowledged the central role of the utility as the primary educator, implementer, and communicator of the potential benefits of the AMI build-out in its service territory.<sup>30</sup> We stress again that it is the responsibility of BGE to vigorously and effectively communicate with its customers so as to ensure that non-responsive customers are provided every opportunity to receive the benefits of the AMI initiative.<sup>31</sup> In support of these efforts we previously directed the utilities to waive the respective opt-out fee imposed following the transition of a non-responsive customer into the opt-out program, provided that the customer contacts their utility within 30 calendar days to schedule installation of a smart meter.<sup>32</sup> As part of our continued commitment to oversee the effectiveness of the AMI implementation efforts, we hereby request comment on the limited issue of whether the time period during which a customer may contact their utility to schedule an installation appointment and receive a bill credit for the imposed opt-out fee should be extended from 30 days to 60 or 90 days.

While efforts continue with respect to the scheduling of smart meter installations at the premises of non-responsive customers, approximately 1.8% of current opt-out customers have affirmatively expressed their decision not to receive a smart meter.<sup>33</sup> Further, we note the potential for some of the non-responsive customers that have been transitioned into the opt-out program to remain there indefinitely. Thus, we must take into account some percentage of the projected non-responsive customers in reaching the

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<sup>30</sup> See, e.g. Order No. 86727 (Nov. 25, 2014) at 5-6.

<sup>31</sup> We encourage BGE to continue its efforts to provide enhanced communication and education opportunities. The Saturday installation “blitzes” and communications campaign that BGE has recently deployed represent proactive steps that we continue to encourage. See BGE Response to OPC Data Request No. 01-02.

<sup>32</sup> *Id.* at 10.

<sup>33</sup> Tr. at 53 (Butts).

appropriate interim adjustment to the monthly opt-out fee. An interpolation of the estimated monthly opt-out fees provided by BGE indicates that an opt-out rate in the range of 2.6 – 2.9% yields a monthly fee of approximately \$5.50.<sup>34</sup> Based on the observed trends regarding affirmative opt-outs versus non-responsive customers, we find this to be an appropriate range of opt-out rates for purposes of rendering an interim adjustment, especially given that the additional quarterly metrics reporting required herein would facilitate consideration of another adjustment prior to the true-up process, should circumstances warrant.<sup>35</sup>

As noted by Staff, despite the higher-than-expected opt-out percentages currently reported by BGE, opt-out revenues collected through July 2015 fell short of reported opt-out costs by over \$1.1 million.<sup>36</sup> However, Staff projected that should the Commission take no action by way of an interim adjustment, that opt-out revenues may begin to exceed opt-out costs during the third quarter of 2015.<sup>37</sup> This observation, coupled with the projected decline in the opt-out rate and the additional quarterly reporting required pursuant to this Order, justify adoption of this interim adjustment. Therefore, in light of these observed and projected opt-out trends in the BGE service territory, we find it reasonable to revise the recurring monthly opt-out fee downward to \$5.50 beginning with

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<sup>34</sup> See BGE Comments at 2.

<sup>35</sup> BGE anticipates that the opt-out rate will steadily decline to a steady-state level of 1% by mid-2018. BGE Response to OPC Data Request No. 01-04.

<sup>36</sup> Staff Comments at 3-4. Through July 2015, BGE collected \$6,046,616 in revenues from the opt-out fees established pursuant to Order No. 86200, while the costs of providing the opt-out option to customers during this time period was reported as \$7,157,081. *Id.* at 4.

<sup>37</sup> In response to a data request, BGE noted that an incremental \$1,832,489 in opt-out revenues was collected during August and September 2015. See BGE Response to OPC Data Request No. 01-05. OPC did not, however, solicit or provide the commensurate opt-out costs for those months. Staff observed that opt-out revenues during the August to September timeframe may have accumulated at a faster rate than in prior months given the imposition of the one-time \$75 up-front fee for non-responsive customers who recently completed the BGE 15-step communication protocol. Tr. at 85 (Hurley).

the January 2016 billing cycle. With the exception of this interim adjustment, all other aspects of Order No. 86200 remain unchanged.

In regard to our colleagues' dissenting and concurring opinions, we too share deeply their concern with respect to the manner and effectiveness of the smart meter deployment efforts in the limited-income communities. We find that our concerns are most constructively expressed and remedied through policies that ensure equal access to this technology, as well as realistic mechanisms by which to opt out of a smart meter installation should the customer so choose.

We strongly disagree, however, with our dissenting colleague's contention that the record does not support the reduced opt-out monthly fee of \$5.50. As stated in our Order, the new monthly fee is well within the range of interim fees proposed by parties in the case and appropriately balances the recent BGE opt-out levels with expectations – well documented in the record – that these levels will decline as previously non-responsive opt-out customers are converted to AMI customers. Furthermore, BGE did not recommend an opt-out fee lower than \$5.50 per month as our colleague asserts. Rather, the Company's testimony regarding the active and on-going steps it will take to reduce the number of non-responsive opt-out customers is consistent with the revised monthly fee of \$5.50.<sup>38</sup>

Today's decision to reduce the monthly fee paid by opt-out customers of BGE speaks for itself in regard to our continued commitment to monitor the effectiveness of the opt-out policies; the revised monthly opt-out fee for BGE customers is now the lowest

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<sup>38</sup> Tr. At 60 (Butts/Commissioner Mills).

in the nation as determined by a state regulatory body.<sup>39</sup> Moreover, the additional reporting metrics ordered herein will further ensure and enable the proactive monitoring of the opt-out revenues versus opt-out program costs so that interim adjustments may be more easily facilitated in the future, should circumstances warrant.

Mitigating the recurring monthly fees so that opting out remains a viable, and not just theoretical, option for customers is only one piece of the puzzle with respect to ensuring that the limited-income community is not adversely affected by the advent of the smart grid. More importantly, we must safeguard against situations in which a customer of limited means is transitioned into the opt-out program simply due to communication barriers; customers with inaccessible meter locations that have not responded to one of BGE's fifteen communication initiatives are currently transitioned into the opt-out program after being deemed "non-responsive customers."<sup>40</sup>

As noted by Staff, our non-responsive customer protocol has only been in place for approximately 6 months, but it is clear from our most recent hearing that more than half of customers currently paying the opt-out fee did not make the affirmative decision to do so – a situation that is particularly concerning given that the inaccessible meters are

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<sup>39</sup> While the Vermont utilities are prohibited from charging customers an opt-out fee, this is the result of a bill passed by the Vermont legislature and not a decision of its state utility economic regulator. *See* Sec. 1.30 V.S.A. 801. Such action does not render the opt-out option "free," but rather socializes the costs directly attributable to the opt-out customers across all customer classes instead. For example, the \$7.2 million incurred by BGE through July 2015 (and all continued costs thereafter) would be borne by all ratepayers rather than by the opt-out customers – a result that OPC strongly advocated against in this case, stating, "those who do not Opt-Out should not have to pay any incremental costs resulting from other customers' Opt-Out." ML#148816: *Comments of the Office of People's Counsel in Response to Company Proposals Filed in Response to PSC Order No. 85294* (July 31, 2013) at 3.

<sup>40</sup> Order No. 86727 (Nov. 25, 2014).

concentrated in limited-income communities located in Baltimore City and Baltimore County.<sup>41</sup> We find that this phenomenon is most appropriately addressed through a multi-faceted effort to provide these previously non-responsive customers with equal access to the smart grid technology through targeted communications and additional opportunities to de-enroll from the opt-out program while recouping any opt-out fees that (perhaps unintentionally) accrued in the interim.

Therefore, as part of this decision, we are seeking comments on an expedited schedule regarding the length of the so-called grace period during which a customer may call their utility, schedule an installation appointment, and receive a waiver or refund of the assessed opt-out fees. Extending this grace period from 30 days to 60 or 90 days, especially if combined with targeted communication strategies, could provide the needed flexibility and incentive that is missing in this deployment effort. A recent analysis conducted by the Low Income Energy Issues Forum with respect to the decision making by limited-income consumers concluded that research supports the proposition that when low-income families have the ability to manage their energy usage through grid modernization technologies, they will choose to do so and exercise control for the simple reason it will free up income to apply to other expenses.<sup>42</sup> Therefore, there is no reasonable basis to assume that the limited-income community is resistant to the smart grid technology on principle, but rather it is more likely that this customer segment is not responding to the communication strategies currently employed by BGE.

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<sup>41</sup> OPC Comments at 3.

<sup>42</sup> Judith Schwartz, *Low Income Consumer Decision Making*, Low Income Energy Issues Forum (June 2014), available at: <http://defgllc.com/publication/low-income-consumer-decision-making/>.

Because this Order: takes the proactive step to apply an interim adjustment to the monthly fee paid by opt-out customers of BGE; directs additional quarterly metrics reporting to assist with the monitoring of the opt-out revenues and costs; and requests comments on the length of the grace period during which a customer may request an installation appointment and receive a waiver of the opt-out fees, we must respectfully disagree with the positions articulated by our **colleague** in this proceeding.

**IT IS THEREFORE, this 24th day of November, in the year Two Thousand Fifteen, by the Public Service Commission of Maryland,**

**ORDERED:** (1) That BGE file additional quarterly metrics regarding the collection of opt-out revenues and the costs for servicing opt-out customers on a quarterly and program-to-date basis as described herein;

(2) That any party wishing to do so shall file comments no later than December 10, 2015 on the question of whether the time period during which a customer may contact their utility to schedule an installation appointment and receive a bill credit for the imposed opt-out fee should be extended from 30 days to 60 or 90 days;

(3) That the recurring monthly fee for opt-out customers of BGE will decrease to \$5.50, effective with the January 2016 billing cycle; and

(4) That BGE is directed to file revised tariff pages to reflect the modified

recurring monthly opt-out fee established herein no later than December 1, 2015.

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

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

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

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

## **CONCURRING STATEMENT OF COMMISSONER ANNE E. HOSKINS**

I join in the Majority's decision to reduce the monthly opt-out fee and seek comment relating to the initial \$75 fee, but write separately to echo the concern expressed by Commissioner Williams about the burden fixed opt-out fees are causing on limited-income customers, particularly those who are "defaulted" into opt-out status, and to urge additional action by the Commission.

On November 25, 2014, the Commission issued Order No. 86727, which I joined, that dealt with the challenges relating to inaccessible meters, many of which are located in the City of Baltimore. The intention of Order No. 86727 was good, but the results are not as we predicted. There are still thousands of customers in BGE's outreach queue, and a disproportionate number of customers who either have been or will be assessed opt-out fees by default live in some of our poorest neighborhoods.<sup>1</sup> Even with the reduced monthly fee approved today, customers who are defaulted into an opt-out status could face increased electricity bills of as much as \$141 in the coming year, based on *estimated* cost-causation that has yet to be fully examined by the Commission. Consequently, while I support the Majority's decision to reduce the monthly opt-out fee, and the decision to seek comment on extending the grace period over which the initial \$75 fee can be refunded, I believe the Commission should take additional steps in the near term to reduce the burden on limited-income customers.

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<sup>1</sup> See e.g., ML#177237: *Comments of the Office of People's Counsel* ("OPC Comments") (Oct. 29, 2015) at 3. (The Office of People's Counsel submitted zip-code specific statistics showing that "the vast majority of non-responsive customers remain in Baltimore City and Baltimore County, in some of the poorest neighborhoods.").

First, the Commission should revisit these interim opt-out charges in 6 months. While I believe the \$5.50 rate is a reasonable interim *estimate*, conflicting comments in the record<sup>2</sup> about the predicted trend of the opt-out percentage demonstrate the need for the Commission to revisit the opt-out rate once BGE completes its outreach to customers with inaccessible meters and after the Commission completes its review of the smart meter implementation in the pending BGE rate case.

Second, the Commission should accept comments on how to ensure customers who have already been defaulted into an opt-out status, but subsequently opt-in, can be afforded a fair true-up of the front-loaded \$75 opt-out fees they paid.

Finally, fixed AMI opt-out charges, when taken together with other recently increased fixed charges create a particularly difficult burden for limited-income customers. The Commission should use its authority to ensure that customers who are defaulted into AMI opt-out status are not priced-out of access to essential utility services.

*/s/ Anne E. Hoskins*

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Commissioner

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<sup>2</sup>See e.g. ML#173205: *Case No. 9208 – Second Quarter 2015 Metrics Report of Baltimore Gas & Electric Company* (“BGE 2015 Q2 Report”) (Aug. 17, 2015) at 9; ML#175600: *Case No. 9208 – Supplemental Filing of Baltimore Gas and Electric* (Oct. 6, 2015); ML#177223: *Comments of Maryland Smart Meter Awareness Before the Maryland Public Service Commission in Response to the Commission’s Notice of October 8, 2015* (“MSMA Comments”) (Oct. 29, 2015) at 12; ML#177219: *Staff Comments Regarding the Opt-out Fee Structure for Baltimore Gas and Electric Company in accordance with Order No. 87184* (“Staff Comments” at 6); Nov. 5, 2015 Transcript at 82.

## **DISSENT OF COMMISSIONER HAROLD D. WILLIAMS**

I have consistently stated that imposing significant upfront costs and recurring monthly fees on customers who choose to opt out of the Utilities' smart meter implementation plans is not in the public interest.<sup>1</sup> While I believe that implementing advanced metering infrastructure in Maryland to achieve more reliable service to benefit all customers is a priority, I remain unconvinced that the Commission should require customers who opt-out of the program to pay higher prices. As noted in my prior dissent in Order No. 86200 which established the initial opt-out fee, there is at least one state legislature (i.e. Vermont) that has prohibited utilities from charging opt-out fees altogether.<sup>2</sup> I continue to believe that Maryland should follow that model and am further convinced by the record in this proceeding that the opt-out fee disproportionately burdens low-income customers, which is an unacceptable outcome. Therefore, I respectfully dissent.

I can commend the Majority for considering an interim adjustment that would lower the established \$11.00 recurring monthly fee paid by opt-out customers, to reflect a higher than expected opt-out rate assumed by BGE in setting the initial opt-out fee in Order No. 86200. Nonetheless, I find it dubious as to how my colleagues settled on a new monthly recurring fee of \$5.50, which was not proposed or even discussed by any party in the record. The Majority picks an opt-out rate in the range of 2.6% to 2.9% to yield a \$5.50 monthly opt-out fee and does not provide a sufficient reasoned basis for its choice. However, both BGE and OPC present evidence on the record to demonstrate that the

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<sup>1</sup> Order No. 86200 at D-1.

<sup>2</sup> Order No. 86200 at D-2.

current opt out rate is higher than the range relied upon by the Majority and would yield a lower monthly fee than proposed by the Majority.

The Majority bases its decision to adopt an opt-out range of 2.6% to 2.9% on *projected trends* of the number affirmative opt-outs versus non-responsive customers.<sup>3</sup> Instead, I believe that an interim adjustment should be based on the current *actual* opt-out range of 3.8% -4.15% reported in BGE’s recent performance metrics<sup>4</sup> and acknowledged by the Majority as the reason for convening the November 5, 2015 hearing in the first place.<sup>5</sup> During the hearing, BGE noted that its present opt-out rate is 4.1% (down from its peak of 4.15% in September 2015) and of that amount, 2.3% are non-responsive opt-outs.<sup>6</sup> Similarly, OPC noted that a 3.8% opt-out rate is reasonable based on its evaluation of BGE’s opt-out data and trends.<sup>7</sup> In my opinion and based squarely on the record, I believe a reasonable opt-out rate would be somewhere between 3.8% and 4.1% – what was argued and presented by the parties – and not a range that was never discussed during cross examination. To assist the Commission in determining the opt-out fee, BGE provided a chart with estimated opt-out fees for the range from 1% to 4%.<sup>8</sup> According to BGE’s chart, an opt-out range of 3% would yield a monthly fee \$4.96 and an opt-out range of 4% would yield a monthly fee of \$4.26.<sup>9</sup> OPC further recommends that the Commission set the interim opt-out fee monthly charge at \$3.51 which it believes should

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<sup>3</sup> Majority Opinion at 7.

<sup>4</sup> ML#173205: *Case No. 9208 – Second Quarter 2015 Metrics Report of Baltimore Gas & Electric Company* (“BGE 2015 Q2 Report”) (Aug. 17, 2015) at 9; ML#175600: *Case No. 9208 – Supplemental Filing of Baltimore Gas and Electric* (Oct. 6, 2015).

<sup>5</sup> Majority Opinion at 2.

<sup>6</sup> Tr. at 52 (Butts).

<sup>7</sup> Tr. at 66 (Simmons).

<sup>8</sup> *Comments of Baltimore Gas and electric Company on Opt-Out Fee Adjustment* (“BGE Comments”) October 29, 2015 at 2.

<sup>9</sup> *Id.*

remain in place until the Commission holds a proceeding to true up the fee to actual costs or BGE applies for a change in base rates.<sup>10</sup>

While I believe that no monthly recurring opt-out fee should be charged, it is my opinion that, if the Commission is going to adopt an interim adjustment then it should be one that is: 1) based on the evidence presented; and, 2) is most favorable for Maryland customers. Here, the Commission is choosing to adopt an opt-out monthly charge of \$5.50 which is approximately \$0.50 to \$2.00 higher than what the evidence supports. Now, the differential between the monthly opt-out fee proposed by the Majority and those recommended by BGE and OPC might not make a difference to some customers, but it may make a world of difference to those customers who live on fixed or lower income and who already struggle to keep the lights on.

Moreover, I find it even more egregious that the Majority's thinly supported \$5.50 monthly opt-out fee falls disproportionately on low-income customers. BGE reported that in October there were 51,599 total opt-out customers in its service territory.<sup>11</sup> The 51,599 included 29,324 customers who defaulted into the opt-out status after proceeding through all 15 steps of the BGE's non-responsive communication protocol and 22,275 customers who affirmatively opted-out.<sup>12</sup> In an OPC data request, BGE also noted that it is currently engaged in non-responsive communication protocols with 12,773 residential and commercial customers, including 6,922 customers who have yet to receive the announcement letter and door hanger.<sup>13</sup> OPC found that the vast majority of "non-responsive" customers are in Baltimore City and Baltimore County and focused in the

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<sup>10</sup> OPC Comments at 1.

<sup>11</sup> OPC Comments at 2.

<sup>12</sup> OPC Comments DR-1.

<sup>13</sup> Id.

poorest neighborhoods.<sup>14</sup> The five zip codes with the most non-responsive customers are all entirely or partially in Baltimore City. BGE's data indicates that hundreds of customers are non-responsive in each of Baltimore City's poorest neighborhoods (as tracked by zip codes). In contrast, BGE services 21 zip codes in which only one customer is non-responsive – and none of those are in Baltimore City. I can agree that it is BGE's responsibility to vigilantly perform outreach to communicate to non-responsive customers and ensure they are provided every opportunity to opt-in and benefit from the AMI Initiative.

Although the Majority believes that it would be discriminatory to set different rates for low-income customers, I believe that imposing a recurring monthly fee (in addition to a \$75 upfront fee) will have a perverse result. It will add to the bills of those who can least afford them, resulting in additional arrearages and service interruptions. Of course, the irony is that one benefit of smart meters is the ability of the utility to more easily discontinue service upon nonpayment – disproportionately burdening this same group of customers even further.

Although the Majority's decision reduces the recurring monthly opt-out fee, it bases the new fee on an opt-out range that is lower than the ranges supported by either OPC or the record. Hence, the Majority is selecting to adopt a monthly fee of \$5.50, which is up to \$2.00 higher than what the evidence supports and is least favorable to Maryland customers.

Ultimately, the Commission should not have asked whether the fee should be *reduced*, but instead whether it should be *eliminated*. The more prudent path is to

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<sup>14</sup> OPC Comments at 3.

consider AMI implementation costs including opt-out costs in the Utilities' future base rate proceedings.<sup>15</sup> Given that BGE recently filed a rate case seeking AMI cost recovery,<sup>16</sup> this proceeding would have provided the perfect opportunity to eliminate the opt-out fee and instead examine BGE's AMI costs during the base rate case, knowing that an equitable rate adjustment could be made in the near future.

*/s/ Harold D. Williams*  
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*Commissioner*

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<sup>15</sup> Order No. 86200 at D-3.

<sup>16</sup> *In The Matter Of The Application Of Baltimore Gas And Electric Company For Adjustments To Its Electric And Gas Base Rates*, Case No. 9406, November 6, 2015.