

ORDER NO. 87900

IN THE MATTER OF THE APPLICATION	*	BEFORE THE
OF THE BALTIMORE GAS AND	*	PUBLIC SERVICE
ELECTRIC COMPANY FOR APPROVAL	*	COMMISSION
OF A GAS SYSTEM STRATEGIC	*	OF MARYLAND
INFRASTRUCTURE DEVELOPMENT AND	*	
ENHANCEMENT PLAN AND	*	
ACCOMPANYING COST RECOVERY	*	
MECHANISM	*	
	*	_____
	*	
2016 AMENDMENT TO STRIDE PLAN	*	CASE NO. 9331
	*	_____

Issue Date: November 23, 2016

To: All Interested Parties

On July 1, 2016, the Baltimore Gas and Electric Company (“BGE” or “Company”) filed in this matter an Application for Approval of First Amendment to Gas System Strategic Infrastructure Development and Enhancement (STRIDE) Plan and Accompanying Cost Recovery Mechanism (the “Amendment”).¹ BGE seeks to amend, under Section 4-210(e)(2) of the Public Utilities Article (“PUA”) of the Maryland Annotated Code, its STRIDE Plan by adding a sixth asset category for system-wide replacement. Specifically, the Company proposes to replace all known pre-1970 ¾” high pressure steel services (hereinafter “HP Steel Services”) on its gas distribution system at an accelerated pace over a ten-year period, at an initial cost of approximately \$22 million per year.²

¹ On March 26, 2014, the Maryland Public Service Commission (“Commission”) gave final approval to the Baltimore Gas and Electric Company’s (“BGE” or “Company”) Strategic Infrastructure Development and Enhancement (“STRIDE”) Plan and associated cost recovery mechanism, which included a fixed annual surcharge. *See* ML 153571.

² July 1, 2016 Amendment Application 3.

BGE states that beginning in late 2013 into early 2014, the Company experienced a consistent and annual increase in the number of system leaks allegedly attributable to coupling failures on the HP Steel Services.³ According to the Company, the failures increased significantly during cold weather months. By the end of 2015, the Company experienced a relative high leak rate of 3.03 leaks per mile of HP Steel Services. Further, that asset category represented approximately 35% of all service leaks.⁴ In January 2015, the Company changed its standards to require the entire replacement of any steel gas service installed prior to 1970.⁵ Thus, BGE decided to remove the HP Steel Services proactively and accelerate this replacement work through the STRIDE program.⁶

In connection with the Amendment, BGE seeks to adjust its previously approved STRIDE surcharge to include the associated replacement costs.⁷ As proposed, the monthly impact of the revised surcharge would be \$0.10 for residential customers, \$0.53 for Schedule C customers, and \$48.25 and \$8.28 for Schedule IS and ISS customers, respectively.⁸ Furthermore, the proposed revised STRIDE rates would take effect January 1, 2017, and continue for five years, or through December 2021.⁹

On August 4, 2016, the Commission held a pre-hearing conference and subsequently issued Order No. 87699, which adopted a procedural schedule agreed upon by BGE, the Office of People's Counsel ("OPC"), Maryland Energy Group and W.R. Grace & Co. (together "MEG"), and the Commission's Technical Staff ("Staff")

³ BGE Prepared Direct Testimony of Christie D. McMullen ("McMullen Direct"), Corrected Version, 6.

⁴ BGE Company Exhibit CDM-1, Strategic Infrastructure Development and Enhancement ("STRIDE") Plan Supplement, Corrected Version, 1.

⁵ BGE Exhibit CDM-1 at 2.

⁶ McMullen Direct 6.

⁷ July 1, 2016 Amendment Application 3-4.

⁸ McMullen Direct 11.

⁹ BGE Prepared Direct Testimony of John C. Frain ("Frain Direct"), Corrected Version, 3-4.

(collectively, the “Parties”), including dates for discovery and the filing of written testimony and legal briefs.¹⁰ In support of the Amendment, BGE sponsored the prepared testimony and exhibits of Christie D. McMullen, Vice President of Gas Distribution at BGE, and John C. Frain, Director of Regulatory Strategy and Revenue Policy at BGE.¹¹ On September 8, 2016, Staff and OPC filed their respective written testimony addressing the proposed Amendment.

On September 22, 2016, BGE notified the Commission that the Parties had reached a settlement on all issues concerning BGE’s Amendment. The following day, on September 23, 2016, BGE filed with the Commission a Joint Motion for Approval of Agreement of Unanimous Stipulation and Settlement (“Settlement Agreement” or “Agreement”).¹² The Settlement Agreement authorizes BGE to revise its STRIDE Plan to add the HP Steel Services and replace those assets system-wide. The Parties do not object to BGE’s revenue requirement calculation, allocation of revenue changes among different classes of customers, or revised STRIDE surcharge calculation and effective date.¹³ Among other things, the Settlement Agreement also requires BGE to perform a “root cause analysis to determine why pre-1970 ¾” high pressure steel services on BGE’s gas distribution system are leaking.”¹⁴ The Agreement directs BGE to submit a report of its root cause analysis findings to the Commission “as part of BGE’s STRIDE reconciliation filing in March 2018.”¹⁵

¹⁰ Order No. 87699.

¹¹ BGE filed corrected testimony for Witnesses McMullen and Frain on August 12, 2016. *See* ML 196293.

¹² *See generally* Joint Motion for Approval of Agreement of Unanimous Stipulation and Settlement (hereinafter “Joint Motion”).

¹³ Joint Motion ¶¶ 4-5.

¹⁴ *Id.* ¶ 8.

¹⁵ *Id.*

In light of the Joint Motion, the Commission amended the procedural schedule adopted in Order No. 87699 and held an evidentiary hearing on October 3, 2016, to address issues raised in the Settlement Agreement and to enter pre-filed testimony into the record. The Commission also heard testimony in support of approving the Settlement Agreement. After concluding the hearing, the Commission took the matter under advisement.

We have reviewed the Parties' Joint Motion and proposed Settlement Agreement, party witness testimony, and the Amendment itself. For the reasons set forth below, we shall conditionally approve the Settlement Agreement, subject to BGE's acceptance of two modifications pertaining to the revised surcharge and the root cause analysis requirement.

Commission Decision

I. **BGE's Revised Cost Recovery Mechanism**

We previously found in Order No. 86147 that BGE's STRIDE Plan satisfied the criteria in PUA §§ 4-210(a)(3)(i) – (v). Upon meeting the Commission's conditions for approval, we gave final approval to BGE's STRIDE Plan and associated cost recovery mechanism on March 26, 2014, with a tariff effective date of April 1, 2014. We stated that BGE could begin recovering estimated STRIDE project costs by surcharge in 2014 and that the associated surcharge could remain in effect "for a maximum of five years."¹⁶ Thus, the Company's approved STRIDE surcharge will expire on or around March 31, 2019. By Amendment, BGE proposes to revise the approved surcharge and reset its effective date to 2017, which would shift the surcharge expiration date to 2021. Notably,

¹⁶ Order No. 86147 at 29, 39.

the Company has not offered any legal or other basis for extending its surcharge recovery beyond the 5-year limit prescribed under the STRIDE statute.

We take our direction from PUA § 4-210(g), which provides, in pertinent part, that “[a] surcharge under this section shall be in effect for 5 years from the date of *initial implementation* of an approved plan.” PUA § 4-210(g)(1)(i) (emphasis added). As stated in Order No. 86147, this provision imposes a maximum 5-year time limit on the allowable surcharge mechanism to protect consumer interests. In other words, while the purpose for allowing surcharge cost recovery is to incentivize gas companies to accelerate the improvement or replacement of their distribution infrastructure, it does not allow for such recovery indefinitely.

Our reading of § 4-210(g)(1) is a plain reading of the STRIDE statute, which finds further support in the legislative history.¹⁷ The Maryland General Assembly intentionally placed a cap on the monthly surcharge and a 5-year limit on the surcharge mechanism under STRIDE.¹⁸ While the statute contemplates amendments to an approved STRIDE Plan, it does not explicitly (or implicitly) allow for extending the 5-year time limit by such an amendment.¹⁹ In fact, we have yet to find language anywhere in the STRIDE statute that would permit expanding the time limit for surcharge recovery. Moreover, the effective 5-year period is triggered by the “initial implementation of an

¹⁷ See Dep’t of Legis. Servs., Fiscal & Policy Note, Revised, H.B. 89, 2013 Sess., at 3 (Md. 2013).

¹⁸ *Id.*

¹⁹ At the October 3rd hearing, Staff supported the Company’s revised surcharge proposal and cited a recent case in which the Court of Special Appeals stated, in dicta, that an approved surcharge under STRIDE “may continue for certain ongoing projects even after that five-year period.” *Md. Office of People’s Counsel v. Md. Pub. Serv. Comm’n*, 226 Md. App. 483, 508 (2016) (citing PUA § 4-210(g)(1)). We are unpersuaded by Staff’s argument, given the non-binding effect of dicta and the additional fact that the scope of § 4-210(g)(1) was not an issue presented for the court’s consideration.

approved *plan*.”²⁰ The language does not follow the implantation of an approved infrastructure replacement project. This distinction is critical.

PUA § 4-210(a) defines a “plan” to mean “a plan that a gas company files under subsection (d) of this section.”²¹ A “project”, on the other hand, means “an eligible infrastructure replacement project proposed by a gas company in a plan filed under this section.”²² Thus, under STRIDE, a plan is comprised of one or more eligible infrastructure replacement projects for which the company may recover reasonable and prudent costs through a cost-recovery schedule and a fixed annual surcharge.²³ Among other things, a STRIDE plan must specify a time line for completing each eligible project and the estimated cost of each project. To be certain, BGE has not submitted a new STRIDE application. Instead, the Amendment proposes to add a sixth asset class to the existing Plan; it does not implicate or replace any other approved project under the Plan. While BGE’s revised tariff, as proposed, may not go into effect until 2017, the STRIDE statute will not permit the Company to extend the duration of its surcharge from 2019 to 2021.

II. BGE’s Root Cause Analysis

As a further condition of Settlement, BGE agreed to perform a “root cause analysis” to determine why the HP Steel Services on its gas distribution system are leaking.²⁴ More specifically, this provision of the Settlement Agreement provides that:

[t]he analysis will be performed in the same manner as prior analyses conducted by BGE consultants. The analysis

²⁰ PUA § 4-210(g)(1)(i) (emphasis added).

²¹ *Id.* § 4-210(a)(4).

²² *Id.* § 4-210(a)(5).

²³ *Id.* § 4-210(d)(1)(ii).

²⁴ Joint Motion ¶ 8.

will be performed on a minimum of two hundred (200) leaking pre-1970 ¾” high pressure steel services from BGE’s gas distribution system. BGE will provide a report of the findings of the root cause analysis to the Commission as part of BGE’s STRIDE reconciliation filing in March 2018.²⁵

Company witness McMullen stated that BGE decided to replace the entire population of HP Steel Services after it experienced an increase in system leaks and a relatively high leak rate attributable to “coupling failures” on the HP Steel Services.²⁶ Although Ms. McMullen explained how the coupling failures may have contributed to the gas leaks, she did not describe any efforts by the Company to ascertain the true cause of the gas leaks. Nothing in BGE’s Amendment or the supporting testimony indicates that BGE ever performed any such root cause assessment of the increased leaks. At the October 3 hearing, the Company acknowledged that it had not performed a comparable analysis.

We find it particularly odd that BGE has seemingly placed the cart before the horse in this instance by proposing to undertake a proactive (and costly) replacement before determining (or confirming) the true cause of the system leaks. A critical element in defining an eligible infrastructure replacement is the requirement that the replacement “is designed to improve public safety or infrastructure reliability.”²⁷ According to Ms. McMullen, replacement of the HP Steel Services would “remove[] a potential leak source on BGE’s gas distribution system that is located in close proximity to the customer’s premise.”²⁸ This, in turn, would improve system safety and infrastructure reliability.

²⁵ *Id.*

²⁶ McMullen Direct 6.

²⁷ PUA § 4-210(a)(3)(ii).

²⁸ McMullen Direct 8-9.

While the system-wide replacement of HP Steel Services should, in theory, reduce the system's susceptibility to gas leaks, until BGE identifies the true cause of the gas leaks, system reliability may continue to be subjected to risk. We find that a root cause analysis would greatly aid the Company in effecting cost-effective repairs that directly enhance system reliability. We further conclude that the public interest would be better served by requiring the Company to coordinate and submit the results of an independent root cause analysis not later than one year from the date of this Order.

IT IS THEREFORE, this 23rd day of November, in the year Two Thousand and Sixteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Parties' Joint Motion for Approval of Agreement of Unanimous Stipulation and Settlement ("Settlement Agreement"), which adopts the Baltimore Gas and Electric Company's ("BGE") First Amendment to Gas System Strategic Infrastructure Development and Enhancement (STRIDE) Plan ("Amendment"), is conditionally granted and the Settlement Agreement is conditionally approved, subject to acceptance by BGE of the following modifications:

- (a) BGE's revised STRIDE surcharge rates shall take effect on January 1, 2017, and remain in effect through but not beyond March 31, 2019;
and
- (b) BGE shall arrange for an independent party to perform a root cause analysis consistent with the Parties' Agreement, and BGE shall submit the results of said analysis to the Commission no later than one (1) year from today.

(2) That BGE's Amendment is conditionally approved, subject to acceptance by BGE of the above-stated modifications;

(3) That BGE shall notify the Commission within 10 business days from today whether it accepts all of the above-stated modifications, and if it does not, BGE's Amendment and the Parties' Joint Motion are denied; and

(4) That all motions not granted herein are denied.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Jeannette M. Mills

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell
Commissioners