ORDER NO. 88259

IN THE MATTER OF THE APPLICATION OF COLUMBIA GAS OF MARYLAND, INC. FOR AUTHORITY TO INCREASE RATES AND CHARGES	* * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND CASE NO. 9417

Issue Date: June 16, 2017

This Order affirms the Supplemental Proposed Order issued by Public Utility Law Judge Ryan C. McLean ("PULJ" or "Judge") in this case denying Columbia Gas of Maryland, Inc.'s ("Columbia" or "the Company") tariff proposal to move Strategic Infrastructure Development and Enhancement ("STRIDE")-related projects into rate base through a Make-Whole proceeding. On September 26, 2016, Judge McLean issued a Proposed Order granting the Joint Motion for Approval of Stipulation and Settlement ("Settlement") filed in this case by Columbia, the Commission's Staff ("Staff") and the Maryland Office of People's Counsel ("OPC"). The Proposed Order became final on October 27, 2016 as Order No. 87851.[1]

The sole issue not addressed or resolved by the Settlement was the legal issue regarding whether Columbia could, through a proposed tariff revision, move its STRIDE-related project costs into base rates through a Make-Whole proceeding. Upon evaluating the Public Utilities Article ("PUA") provisions, the Parties' positions on this issue, along with the Commission's decision in Case No. 9386 and applying a "public interest"

[1] Pursuant to the Settlement, the Columbia and the Parties agreed (among other things) that the rates agreed to therein would be effective with Unit 1 of the Company's November 2016 billing cycle, and an increase in Columbia's annual revenue requirement of $3.7 million.

analysis, Judge McLean concluded that – short of an amendment to PUA § 4-210 by the General Assembly – Columbia's proposed tariff revision cannot be accepted under the current statutory language.[2] We agree. The Company's appeal of Judge McLean's Supplemental Proposed Order therefore is denied.

A. Columbia's Appeal

In its appeal, the Company notes that under PUA § 4-207, Maryland's smaller utilities are permitted to file abbreviated "Make-Whole" proceedings, which allows the Commission to adjust a small utility's rates by updating its rate base, revenues and expenses, without making any change to the utility's rate of return, rate structure or any accounting approach.[3] In Columbia's rate application in this case, the Company requested approval of new tariff language providing: "Upon issuance of a Commission order at the conclusion of a general rate case or make whole proceeding ("Base Rate Proceeding") that occurs while the current IRIS Surcharge is in effect, the IRIS Surcharge shall be reset concurrent with the implementation of new base rates …"[4] In the case *sub curia*, the Company also proposed to move all STRIDE projects completed through June 2016 from the IRIS into base rates.[5] According to Columbia, since the roll-in of its STRIDE projects was to be fully considered in this case, the roll-in of such projects in future Make-Whole proceedings would not require any change in an accounting method.[6] The Company also argues that nothing in PUA §§ 4-207 and 4-210, or any other

[2] Proposed Order at 23.
[3] *Id*. at 4, citing PUA § 4-207(b)(3).
[4] Columbia Ex. 4, Attachment SBH-2, p. 15 (Sheet No. 109a).
[5] *See* Columbia Gas Appeal Memorandum at 5, citing Columbia Ex. 11.
[6] *Id*.

provision of Maryland law precludes moving STRIDE projects from the IRIS into base rates through a Make-Whole proceeding.

Columbia emphasizes that the General Assembly enacted the STRIDE law in 2013 for the purpose of accelerating gas infrastructure improvements by providing for expedited cost recovery through a monthly surcharge,[7] without requiring the filing of a *base rate* case.[8] However, as the Company also notes, the law caps the monthly STRIDE-surcharge for residential customers at $2.00 per month, and imposes proportionate surcharge caps for other rate classes. Consequently, Columbia insists that unless the Company is allowed to move its STRIDE-related project costs into base rates through a Make-Whole proceeding, the Company must pursue rate cases on an annual basis in order to roll its STRIDE project costs into base rates.[9] Otherwise, it asserts, it will lose the benefit of the STRIDE mechanism with respect to new investments in infrastructure replacement.[10]

B. Staff and OPC's Position

Staff and OPC oppose Columbia's appeal. In its reply memorandum, Staff emphasizes that the PUA § 4-207 "Make Whole" provision is "very limited" – in that the statute only applies to companies whose gross annual revenues are less than three percent of the total gross annual revenues of all public service companies in the State during the same calendar year – making Columbia "uniquely qualified" among electric and natural gas utilities within the State.[11] Impliedly, since the type of tariff proposed by Columbia

[7] In the case of Columbia, the Infrastructure Replacement and Improvement Surcharge ("IRIS").
[8] Columbia Gas Memorandum on Appeal at 3, citing PUA § 4-210.
[9] *Id.*
[10] *Id.*
[11] Staff Reply Memorandum at 5.

for the roll-in of its STRIDE projects into rate base proceedings is infeasible for other electric and natural gas utilities in the State with STRIDE projects, it is inconceivable that Columbia's interpretation of PUA § 4-207 would have been contemplated by General Assembly for the use of the "Make-Whole" provision.

Additionally, Staff urges that because the Make-Whole statute presupposes an existing authorized fair rate of return (since PUA § 4-207(b)(3) prohibits making any change to the utility's rate of return, rate structure or any accounting approach), the statute merely authorizes the Commission to determine if additional revenues are required to allow the utility to earn the fair rate of return authorized in the company's previous *base rate* proceeding.[12] Finally, Staff notes that the Make-Whole statute is further limited in its application, in that it applies only to proposed rates that are to take effect at least 90 days, and no more than 3 years after the Commission enters a final order authorizing the a fair rate of return in the utility's previous *base rate* proceeding.[13] Here, as it does elsewhere, Staff's position suggests (as does Judge McLean) that Columbia's attempt to interpret away any distinction between a *make whole* and a *base rate* proceeding is misguided.

OPC concurs in all of the arguments made by Staff. OPC also urges the distinction between a *make whole* and a *base rate* proceeding, and insists that the restriction that "a base rate proceeding is required to move STRIDE projects into rate base, comes not from the Proposed Order but directly from the statute."[14]

[12] *Id.*
[13] *Id.* at 7.
[14] OPC Reply Memorandum at 1-2.

C. Commission Decision

The Supplemental Proposed Order in this case aptly addresses both the statutory distinction between *make whole* and *base rate* proceedings, and the Commission's implementation of those distinctions through various decisions. As Judge McLean notes, the repeated references in PUA § 4-207 to "base rate proceeding" reflect the General Assembly's intent to limit a utility's revenue increases to the Commission's decisions in "full blown" rate cases.[15]

Columbia asserts, however, that these distinctions do not justify rejection of its proposed tariff. Instead, it argues that PUA § 4-210 (the STRIDE statute) and PUA § 4-207 should be "harmoni[zed], because [the Company asserts] their purposes are … similar."[16] We disagree.

The STRIDE surcharge "mechanism" adopted by the Commission pursuant to PUA § 4-210 specifically allows gas utilities (such as Columbia) to "accelerate gas infrastructure improvements" and also "promptly recover reasonable and prudent costs of investments" between general rate cases.[17] While the STRIDE surcharge is in place (for no more than five years from the date of the implementation of the utility's approved plan), the Company may file amendments to its STRIDE plan and may request an increase in the surcharge (up to the cap) in order to account for any difference between

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[15] Supplemental Proposed Order at 15. While the term "base rate proceeding" itself is not expressly defined, the fact that the General Assembly deigned to create a more limited "Make-Whole" proceeding indicate a clearly there is a difference between them.

[16] Columbia Memorandum on Appeal at 7.

[17] PUA §410(b) "Legislative intent." Although the Commission previously viewed such surcharge mechanisms as a means of reducing the utilities' incentive to maximize revenue and reduce costs, surcharges also have been awarded by the Federal Energy Regulatory Commission to Columbia's pipeline transmission affiliate. *See Columbia Gas Transmission, LLC*, Docket No. RP12-1021, 142 FERC ¶ 61,062 (2013) ("Pipeline Modernization Case").

the estimated cost of the projects included in the plan and the amount recovered under the surcharge.[18] It is clear to us, therefore, that the Legislature intended consideration of periodic amendments to the STRIDE surcharge (during the plan period), based upon findings of reasonableness and prudency – in general base rate proceedings – rather than rolling in STRIDE projects through Make-Whole proceedings, as the mechanism of truing up project costs through the STRIDE surcharge.

Also, while the PUA § 4-210 STRIDE mechanism can be utilized by both large and small gas utilities, only small gas utilities (such as Columbia) can utilize the PUA § 4-207 Make Whole provision. (Larger gas companies, such as Baltimore Gas and Electric Company and Washington Gas Light Company, must file general *base rate* cases in order to roll their STRIDE projects into *base rates*.) Notwithstanding Columbia's arguments, we believe that in enacting the STRIDE statute the Legislature expected that the STRIDE surcharge mechanism and the movement of STRIDE projects into base rates would be consistent among all Maryland gas utilities, and that the roll-in of such projects should only occur through general *base rate* proceedings. Both the statute and the Legislative History presume this. We approve (and in the case of Columbia, approved) the utility's cost recovery schedule associated with its STRIDE plan "at the time we approve" the plan – not afterwards.[19]

[18] If the actual cost of the projects in the plan is more than the amount collected under the surcharge, and the Commission determines that the higher costs are reasonably and prudently incurred, the Commission must approve the surcharge increase (subject to the monthly limits specified in the Statute.) HB662 (Session 2012) Fiscal and Policy Note (revised).

[19] *See* PUA §4-210(d)(4) and (5). "In a **base rate** proceeding after approval of a plan, the Commission shall, in establishing a gas company's revenue requirements, take into account any benefits the gas company realized as a result of a surcharge under the plan.

Inasmuch as this case (Case No. 9417) is a base rate case, Columbia sought – through its Application, and was permitted to by the Commission's acceptance of the Joint Settlement –to roll-in its 2016 STRIDE projects in to rate base.[20] Again, as the PULJ notes: now that the Company's 2016 STRIDE projects are in base rates, there is nothing that would prevent Columbia from a future Make Whole proceeding (for rate adjustments, applicable to those projects) that would not otherwise result in a change in the accounting treatment resulting from this Case No. 9417 *base rate* case proceeding – presuming that no other PUA § 4-207(b)(3) limitation prevented such a filing.

Finally, since the decision of when and what type of rate application the Company wishes to make lies entirely within Columbia's discretion, the Company's public interest and economy of resources arguments are self-serving – at best. There is nothing in the Supplemental Proposed Order that would prohibit the Company's ability to pursue revenue adjustments pursuant the Make-Whole statute (PUA § 4-207) or through a *base rate* proceeding.[21] However, the STRIDE statute (PUA § 4-210) and Commission precedent dictate only that a general *base rate* proceeding (where all utility-operations are considered) is required to move STRIDE projects into rate base. To conclude otherwise

[20] See, Proposed Order at 9; citing Staff Ex. 1 at 4, para. 1.q(3).

[21] In Columbia's Pipeline Modernization Case, its affiliate also stated that the surcharge in that case (*i.e.*, the capital cost recovery mechanism, or CCRM) would avoid "pancaking" Natural Gas Act section 4 rate cases (*i.e.*, general rate cases under the Natural Gas Act). *Columbia Gas Transmission, LLC*, Docket No. RP12-1021, 142 FERC ¶ 61,062 (2013) at ¶ 10. "Pancaking" is the term used for back-to-back rate cases, which is nearly comparable to what might occur from permitting Columbia to implement its proposed tariff in this case, and is considered anathema in public utility ratemaking.

would allow Columbia to circumvent the STRIDE surcharge cap which we believe is not what the Legislature intended.

IT IS THEREFORE, this 16th day of June, in the year Two Thousand Seventeen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Supplemental Proposed Order of the PULJ issued September 26, 2016 is hereby affirmed;

(2) That Columbia Gas of Maryland, Inc.'s appeal is denied and the Company's proposed tariff revision, permitting Columbia to move STRIDE-related projects into rate base through a Make-Whole proceeding "upon issuance of a Commission order at the conclusion of a general rate case or make whole proceeding ("Base Rate Proceeding")" and to reset its IRIS Surcharge concurrent with the implementation of new base rates, is rejected.

/s/ W. Kevin Hughes

/s/ Harold D. Williams

/s/ Michael T. Richard

/s/ Anthony J. O'Donnell
Commissioners