

ORDER NO. 88859

IN THE MATTER OF THE APPLICATION OF BALTIMORE GAS AND ELECTRIC COMPANY FOR ADJUSTMENTS TO ITS GAS BASE RATES <hr style="width: 30%; margin-left: 0;"/>	* * * * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND <hr style="width: 20%; margin-left: auto; margin-right: 0;"/> CASE NO. 9484 <hr style="width: 20%; margin-left: auto; margin-right: 0;"/>
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Issue Date: October 5, 2018

On September 6, 2018, the Baltimore Washington Construction and Public Employees Laborers’ District Council (“Council”) filed a Motion to Compel Responses to Data Requests (“Motion to Compel” or “Motion”) from the Baltimore Gas and Electric Company’s (“BGE”). For the reasons explained below, the Council’s Motion to Compel is denied.

In its Motion, the Council requests that the Commission order BGE to respond to certain questions posed by the Council as part of its Data Request No. 1, which was served on BGE on August 10, 2018.¹ The Council notes that several unsuccessful attempts to resolve the dispute have been made. The Council states that BGE has objected to responding to a substantial portion of Data Request No. 1 and that BGE also rejected a proposed solution offered by the Council to resolve the matter.² The Council notes that “[t]he disputed requests generally seek three categories of information: 1.) the identities of outside contractors who perform services and the related contractor costs that

¹ Case No. 9484, Motion to Compel Responses to Data Requests (“Council’s Motion”) filed by Baltimore Washington Construction and Public Employees Laborers’ District Council on September 6, 2018 at 1.

² Council’s Motion at 1.

BGE is seeking to include in rates; 2.) information related to the procurement practices that BGE utilizes to select its outside contractors; and 3.) the identities of contractors whom BGE has qualified or prequalified, including for traffic control.”³

The Council argues that responses to the disputed data requests should be answered because “outside contractor employees play a significant role in BGE’s provision of safe and reliable gas services to the public, including performing essential construction work on [BGE’s] gas distribution lines.”⁴ The Council points out that the “use of outside contractors composes a material portion of the costs of the operations for which BGE is seeking a rate increase.”⁵ Moreover, the Council estimates that approximately 400 of its members are employed with outside contractors who perform skilled work for BGE on gas distribution lines. However, the Council contends that “some non-union contractors performing similar work for BGE are paid substandard wages and are not adequately trained.”⁶

The Council argues that this type of employment practice is detrimental to the quality of work performed and work place safety. Further, the Council argues that “BGE has an obligation to ensure that its outside contractor procurement practices, and ensuing construction activities, are conducted in a manner that best promotes the provision of safe and reliable service.”⁷ Therefore, the Council contends that any order approving the implementation of a rate increase for BGE should be conditioned on ensuring that the Company is implementing sound outside contractor procurement practices. Additionally,

³ *Id.*

⁴ *Id.* at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

on September 25, 2018, the Council’s Attorney contacted the Commission’s Executive Secretary via email and requested that the Commission consider the direct testimony of David L. Allison, filed on September 14, 2018, in support of the Council’s Motion to Compel, as an exhibit or otherwise.

In response to the Council’s Motion to Compel, BGE filed a reply on September 10, 2018.⁸ In its Response, BGE opposes the Motion to Compel on two grounds: (1) the disputed requests were issued for an improper purpose, i.e., to leverage the Commission’s discovery process to obtain information that could be used by the Council and its members to gain a competitive advantage in bidding for future BGE work; and (2) the requests are not relevant to the base rate proceeding.⁹ BGE points out that under Federal Rules of Civil Procedure “a party is not permitted to propound discovery requests for an ‘improper purpose.’ *See* F.R.C.P. 26(g)(1)(B)(ii).”¹⁰ Here, BGE argues that the Council is using that rate case discovery process to do exactly that by seeking “to acquire BGE commercial information in pursuit of the Union’s private business interests.”¹¹ BGE supports its position by pointing out that the Council’s Motion to Compel expresses disparity in pay and training between union workers employed with outside contractors on BGE jobs versus those working for BGE non-union contractors. BGE notes the Council states that “in the Union’s experience” the non-union workers receive “substandard pay” and are “not adequately trained.” However, BGE asserts the Council does not provide any evidence to support its position.

⁸ Case No. 9484 – Response to the Council’s Motion to Compel (Maillog No. 221995) (“BGE Response”).

⁹ BGE Response at 2.

¹⁰ *Id.*

¹¹ *Id.*

BGE also objects to the Motion to Compel because it seeks information internal to BGE such as amounts paid to contractors for particular projects, and BGE's internal procedures or plans for hiring and prequalifying contractors. BGE argues that disclosure of this information would place BGE at a competitive disadvantage and could be harmful to customers.¹²

Finally, BGE argues that the Council's data requests are beyond the scope of discovery of the Commission's review of BGE's base rate application.¹³ BGE points out that a base rate proceeding is generally focused on four areas of public utility rate making: (1) "the enterprise's gross utility revenues under the rate structure examined"; (2) the "operating expenses ... appropriately incurred to produce those gross revenues"; (3) "the base (rate base) on which return should be earned"; (4) "the return to which investors in the utility enterprise are reasonably entitled."¹⁴

While the Commission encourages parties to bring discovery disputes to its attention for resolution, the scope of discovery in the Commission proceedings is limited. Here, the Council has not shown the relevance of the disputed data requests to the Commission's review of the base rate application. Rather, the data requests are focused on BGE's procurement practices for outside contractors that use non-union labor. The Commission finds that much of the data requested is proprietary to BGE and disclosure could provide a competitive disadvantage. A utility rate case is not the place to seek information to obtain competitive bidding advantage. As requested, the Commission has reviewed and considered the direct testimony of David L. Allison on behalf of the

¹² BGE Response at 2.

¹³ BGE Response at 3.

¹⁴ BGE Response at 3 citing *PSC v. BGE*, 273 Md. 357, 360, n.2 (1974).

Council in support of its Motion and we find that the testimony demonstrates the disputed data requests can be litigated during the regular course of this proceeding.

IT IS THEREFORE, this 5th day of October, in the year Two Thousand Eighteen by the Public Service Commission of Maryland,

ORDERED: That Baltimore Washington Construction and Public Employees Laborers' District Council Motion to Compel Responses to Data Requests is denied.

By Direction of the Commission,

/s/ Terry J. Romine

Terry J. Romine
Executive Secretary