

ORDER NO. 89070

IN THE MATTER OF THE MERGER OF ALTAGAS LTD. AND WGL HOLDINGS, INC.	* * * * * * *	BEFORE THE PUBLIC SERVICE COMMISSION OF MARYLAND _____ CASE NO. 9449 _____
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Issued: March 19, 2019

On August 3, 2018, AltaGas Ltd (“AltaGas”), along with the Maryland Energy Administration (“MEA”); the Baltimore-Washington Construction and Public Employees Laborers’ District Council, an affiliate of the Laborers International Union of North America; and the National Consumer Law Center, National Housing Trust, the Maryland Affordable Housing Coalition, and the Housing Association of Nonprofit Developers (collectively, “Filing Parties”) filed with the Maryland Public Service Commission (“Commission”) a compliance filing (“the Filing”)¹ in connection with Condition 52 (the Most Favored Nation (“MFN”) provision) of Commission Order No. 88631 (“Merger Order”).² In the Filing, AltaGas calculated that Condition 52 of the Merger Order entitled Maryland ratepayers to an additional \$3,878,034.85 in benefits due to the net benefits disbursed to ratepayers within the District of Columbia.³

¹ ML# 221555. Case No. 9449 Docket (“Dkt.”) No. 173.

² ML# 219847, Dkt. No. 164.

³ The Filing, Exhibit B. As it had previously, the Maryland Office of People’s Counsel (“OPC”) contended that the Commission should calculate benefits pursuant to Condition 52 based upon respective customer counts, rather than respective rate bases. As OPC acknowledges, the Commission addressed this issue in the Merger Order. *See* OPC Comments at pgs. 1–2 (ML# 222380, Dkt. No. 180). To the extent any ambiguity exists, the Commission accepts AltaGas’ methodology as well as its conclusion as to the amount of MFN Dollars available.

Condition 52 of the Merger Order states:

The Applicants will ensure that Maryland customers are treated equitably as compared to District of Columbia customers through the following Most Favored Nation (“MFN”) provision....

(d) If X [DC benefits] is larger than Y [Maryland benefits], then the Applicants will consent to an order by the Maryland Public Service Commission for AltaGas to provide additional money (“MFN Dollars”) for Maryland natural gas expansion programs, such that after taking into consideration such MFN Dollars, the value of Y will be equal to X. Any MFN Dollars required under this provision shall be allocated by the Commission in any manner that is consistent with the public interest.⁴

The Commission issued a Notice of Hearing and Request for Comments on the Filing on August 7, 2018. Maryland Office of People’s Counsel (“OPC”), the Commission’s Technical Staff (“Staff”), and United States Department of Defense and all other Federal Executive Agencies (“DOD/FEA”) filed comments. AltaGas filed reply comments.

The Commission conducted a legislative-style hearing on October 24, 2018, during which interested parties provided input as to how the Commission should best allocate these MFN dollars. In this Order, the Commission directs the \$3,878,034.85 in additional Jurisdictional Allocable Benefits (“MFN Dollars”) to be placed in a reserve account to offset any rate increases associated with Condition 10A in the Appendix to the Merger Order.⁵

⁴ Merger Order at pg. A-20.

⁵ Chairman Stanek did not participate in the Commission’s decision. Commissioner Richard dissents and writes separately.

Positions of the Parties⁶

AltaGas and MEA Comments

Both AltaGas and MEA recommend that the Commission allocate the MFN Dollars to the Maryland Gas Expansion Fund (“MGEF”). Condition 7 of the Merger Order required AltaGas to deposit \$30,320,000 to establish this fund, which would, at MEA’s discretion, “kick-start gas expansion efforts throughout the State of Maryland.”⁷ This condition also requires that “[a]t least a majority of these funds will be spent in Washington Gas’ service territory.”⁸ AltaGas may not recover these expenditures through Washington Gas’ rates.⁹

Although AltaGas recommends this course of action, it also concedes that the Merger Order provides the Commission with discretion to direct the additional funds elsewhere.¹⁰

OPC Comments

OPC recommends that that the Commission use the MFN Dollars to offset any rate base increases associated with gas expansion pursuant to Condition 10A of the Merger Order. Condition 10A requires AltaGas and Washington Gas (or “WGL”) to work with MEA to develop gas expansion programs within Washington Gas’ service territory, resulting in Washington Gas investing up to \$70 million over a

⁶ Prince George’s County and Montgomery County did not file written comments. However, counsel for Montgomery County did urge the Commission to order either a rate credit or an offset, contending that only these two proposals provide a direct benefit to ratepayers. Transcript of Oct. 24, 2018 hearing (“Tr.”) at pgs. 68–69.

⁷ Merger Order at A-5.

⁸ *Id.*

⁹ *Id.*

¹⁰ Tr. at pgs. 10–11.

ten-year period.¹¹ Unlike the MGEF created by Condition 7 of the Merger Order, Washington Gas may possibly recover these investments through rate base.¹²

Specifically, OPC recommends that AltaGas place these funds in a reserve account and booked as a regulatory liability:

When it files its next base rate proceeding, Washington Gas should identify all rate base additions made pursuant to Condition 10A. The Reserve Account would then offset the revenue requirement associated with those additions. To the extent that funds remained in the Reserve Account after such offset, the same process would occur in the Company's subsequent rate case until exhaustion of the Reserve Account.¹³

Staff and DOD/FEA Comments

Both Staff and DOD/FEA recommend that the Commission allocate the MFN Dollars as a direct rate credit to all Washington Gas customers. Staff bases this recommendation upon its belief that the rate credit the Commission ordered in the Merger Order was lower than previous rate credits. Staff contends that these additional benefits would alleviate that discrepancy.¹⁴

In the alternative, DOD/FEA agrees with OPC that the Commission should allocate the additional benefits to offset future distribution rate increases related to Washington Gas' investment of up to \$70,000,000 in natural gas expansion required by Condition 10A of the Merger Order.¹⁵

¹¹ Merger Order at pg. A-7.

¹² *Id.*

¹³ OPC Comments at pg. 3.

¹⁴ Tr. at pg. 50, 55.

¹⁵ DOD/FEA Comments (ML# 22373, Dkt. No. 181) at pg. 4.

Commission Decision

After reviewing the written submissions and hearing the parties' positions during the October 24 hearing, the Commission finds that the additional MFN Dollars should be placed in a reserve account to offset any rate increases associated with Condition 10A in the Appendix to the Merger Order. The Commission has substantial discretion in disbursing these funds and has determined that it best serves the public interest to offset rate increases associated with gas expansion under Condition 10A. Gas expansion will be initiated under Condition 10A, and these dollars will reduce the costs to Washington Gas' ratepayers. Further, the MGEF disburses its funds throughout Maryland with only a majority of the funds to be spent within Washington Gas' territory. The Commission concludes that the MFN Dollars are more properly spent within Washington Gas' service territory.

In addition, while Condition 52 of the Merger Order grants the Commission significant leeway to determine which allocation best conforms to the public interest, it also states that any MFN Dollars should go toward "Maryland gas expansion programs." Directing a rate credit to all residential and commercial customers is not allocating those funds to gas expansion. Nor is the Commission using the MFN Dollars to add to the MGEF which would increase that fund; however, we are allocating to gas expansion by offsetting the potential \$70 million in gas expansion to be developed in the WGL service territory. MEA remains essential to the process because that potential expansion is coordinated with MEA as stated in Condition 10A.

Thus, the Commission concludes that the public interest is best served by employing the MFN Dollars to reduce future rate increases resulting from Washington

Gas' natural gas expansion investments under Condition 10A of the Merger Order. This proposal conforms to the language of Condition 52, the desire to retain these MFN Dollars within Washington Gas' territory, and also provides ratepayers with a direct financial benefit.

IT IS THEREFORE, this 19th day of March in the year Two Thousand Nineteen, by the Public Service Commission of Maryland,

ORDERED: 1) That AltaGas Ltd. shall deposit \$3,878,034.85 related to Condition 52 of the Merger Order in this matter into a reserve account that shall accrue interest at Washington Gas Light Company's authorized rate of return;

2) That these MFN Dollars shall be used to offset any rate increases resulting from Washington Gas Light Company's investments of up to \$70 million over a ten-year period under Condition 10A of the Merger Order; and

3) That AltaGas Ltd., Washington Gas Light Company, and the Maryland Energy Administration shall continue to cooperate as to how to invest the funds allocated by Condition 10A of the Merger Order.

/s/ Anthony J. O'Donnell

/s/ Odogwu Obi Linton

/s/ Mindy L. Herman

Commissioners

Dissention of Commissioner Michael T. Richard

I dissent from the majority on this order believing that the Most Favored Nation (“MFN”) funds should have been allocated to the Maryland Gas Expansion Fund (“MGEF”). In my view, depositing the MFN into the MGEF would have been consistent with the intent of Condition 52 of the AltaGas-WGL Merger Order No. 88631 to “provide additional money for Maryland natural gas expansion programs” so long as it is “allocated...in any manner that is consistent with the public interest.” The Maryland Energy Administration (“MEA”) is the State’s energy policy and programs office, and it was designated as the steward of the MGEF. MEA was the State’s advocate during the merger hearings, and its settlement with AltaGas was largely founded on the company’s commitment to expand access to natural gas service in the State. The MGEF was endowed by Company shareholders and created to provide resources to enable MEA to provide a suite of programs to actively advance the policy of gas expansion, which the Commission found to be in the public interest. While this MFN order creates a second fund, or “reserve account,” for a laudable purpose, “to reduce future rate increases,” I would argue that this new fund is unnecessary, redundant and undefined.

First, WGL’s General Service Provision No. Fourteen in its tariff already protects existing gas customers from gas expansion expenses by requiring an economic test prior to making any capital expenditures for expansion investments.

Second, the MGEF can already be used to supplement any gas expansion capital expense that otherwise might not qualify under the mandatory economic test.

Finally, the use and the timing of the new fund seem vague in that no specific expansion project has yet been proposed. In my opinion, as the Commission found in the

Merger Order, it is in the public interest to support MEA's management of the State gas expansion program using MGEF resources which should have included the MFN funds.

/s/ Michael T. Richard

Commissioner