

ORDER NO. 89400

IN THE MATTER OF THE APPLICATION
OF BALTIMORE GAS AND ELECTRIC
COMPANY FOR ADJUSTMENTS TO ITS
ELECTRIC AND GAS BASE RATES

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BEFORE THE
PUBLIC SERVICE COMMISSION
OF MARYLAND

CASE NO. 9610

BGE RATE CASE ORDER

Before: Odogwu Obi Linton, Commissioner
Anthony J. O'Donnell, Commissioner
Mindy L. Herman, Commissioner

Issued: December 17, 2019

APPEARANCES

David Ralph, Daniel Hurson, John Corse, Beverly A. Sikora, Jessica Raba, for *Baltimore Gas and Electric Company*

Margaret M. Witherup, David W. Beugelmans, for *Maryland Energy Group and W.R. Grace & Co.*

Anna K. Ryon, Patrick E. O'Laughlin, Jacob M. Ouslander, for *Office of People's Counsel*

Lloyd J. Spivak, Michael Dean, for *Office of Staff Counsel*

John J. McNutt, Matthew Dunne, for *U.S. Department of Defense and all other Federal Executive Agencies*

James K. McGee, Alexander & Cleaver, P.A., for *C.P. Crane, LLC*

Brian R. Greene, Eric J. Wallace, for *H.A. Wagner, LLC*

Jeffrey P. Brundage, Karen O. Moury, for *NRG Energy, Direct Energy, Vista Energy and Interstate Gas Supply*

Barry A. Naum, for *Walmart, Inc.*

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I. BACKGROUND AND PROCEDURAL HISTORY

On May 24, 2019, pursuant to Public Utilities Article (“PUA”), *Annotated Code of Maryland*, §§ 4-203 and 4-204, Baltimore Gas and Electric Company (“BGE” or “the Company”) filed an Application with the Maryland Public Service Commission (“Commission”) for authority to increase its retail electric and gas rates in Maryland. The Application included proposed tariff revisions and the direct testimony and exhibits of the following individuals: Mark D. Case, Valencia A. McClure, David M. Vahos, Adrien M. McKenzie, Ned W. Allis, Derrick A. Dickens, Jason M. B. Manuel, and Lynn K. Fiery.¹

The Company requested an \$81.1 million increase in electric rates, which includes \$7.1 million of Electric Reliability Investment (“ERI”) initiative revenues currently recovered through the ERI charge on customer bills, and a \$67.6 million increase in gas rates, which includes \$8.7 million of Strategic Infrastructure Development and Enhancement (“STRIDE”) revenues currently recovered through the STRIDE charge on customer bills. The Application was based on a test year consisting of the 12-month period that ended on July 31, 2019, using eight months of actual data as of March 2019 and projected data for four months ending July 2019. According to the Application, the impact of the Company’s requested revenue increase would result in a 2.3 percent overall increase in electric bills and a 6.2 percent overall increase in gas bills.²

On May 29, 2019, the Commission docketed this proceeding as Case No. 9610, suspended the Company’s proposed tariff revisions, and scheduled a pre-hearing

¹ See Maillog 225474 (“BGE Application Letter”) at 1.

² See Maillog 225474 (“BGE Application”) at 4.

conference.³ On June 27, 2019, the Commission held a pre-hearing conference to establish a procedural schedule, consider any petitions to intervene, and address any other pending preliminary matters. The Maryland Office of People’s Counsel (“OPC”) and the Commission’s Technical Staff (“Staff”) entered their appearances, and additional parties petitioned for intervention, including: Maryland Energy Group and W.R. Grace & Co. (together, “MEG”), H.A. Wagner, LLC, C.P. Crane, LLC, the United States Department of Defense and all other Federal Agencies (“DOD/FEA”), Walmart, Inc., and NRG Energy, Inc., Direct Energy Services, LLC, Vistra Energy Corp., and Interstate Gas Supply, Inc. d/b/a IGS Energy (collectively, “Energy Supplier Coalition” or “ESC”). On June 28, 2019, the Commission issued an Order granting the Petitions to Intervene and adopting a procedural schedule.⁴

On August 8, 2019, the Commission published a Notice scheduling evening hearings for public comment. Public comment hearings were held on September 19, 2019, October 16, 2019, and October 17, 2019, in Baltimore County, Baltimore City, and Anne Arundel County, respectively.⁵

On August 23, 2019, BGE filed Supplemental Direct Testimony. On September 9 and 10, 2019, the following parties filed Direct Testimony: DOD/FEA; MEG; Walmart, Inc.; OPC; C.P. Crane, LLC; Energy Supplier Coalition; and Staff. The testimony of Walmart, Inc. and Staff included exhibits.

³ Order No. 89138, *In the Matter of the Application of Baltimore Gas and Electric Company for Adjustments to its Electric and Gas Base Rates*, (May 29, 2019).

⁴ Order No. 89180 at 1.

⁵ See Maillog 226368 (“Notice of Evening Hearings”) at 1.

On September 17, 2019, the Commission designated a panel of three Commissioners for the purpose of conducting the evidentiary hearings in this matter.⁶ On September 20, 2019, Walmart, Inc. filed corrected exhibits to the Direct Testimony of Steve W. Chriss. On October 4, 2019, BGE, OPC, and Energy Supplier Coalition filed rebuttal testimonies. On October 22, 2019, the following Parties filed surrebuttal testimonies: Energy Supplier Coalition; DOD/FEA; H.A. Wagner, LLC; OPC; MEG; Staff; and BGE. Staff's Surrebuttal Testimony included exhibits.

On October 24, 2019, BGE filed an unopposed Motion to Amend the Procedural Schedule and a letter notifying the Commission that the Parties, except for ESC, had reached an agreement in principle on a settlement that would resolve all but one issue.⁷ On October 24, 2019, ESC filed a response to BGE's Motion opposing the process set forth in the Motion of allowing ESC to only contest the settlement, rather than reserving issues related to the Standard Offer Service ("SOS") Administrative Adjustment for litigation.⁸

On October 24, 2019, the Commission suspended the procedural schedule.⁹ On October 25, 2019, BGE, Staff, and OPC filed replies to ESC's response and recommended that the Commission amend the procedural schedule as described in the Motion.¹⁰ On October 25, 2019, BGE filed a Joint Motion for Approval of Agreement of Stipulation and Settlement ("Settlement").¹¹ The Settlement resolves all issues among the parties except for one – the SOS Administrative Adjustment – that is contested by ESC.¹² On October

⁶ The panel included Commissioner Odogwu Obi Linton, Commissioner Anthony J. O'Donnell, and Commissioner Mindy Herman. *See* Maillog 226868 ("Commission Designation of Panel") at 1.

⁷ *See* Maillog 227263 ("BGE Letter and Motion to Amend Procedural Schedule") at 1-2.

⁸ *See* Maillog 227266 ("ESC response") at 6.

⁹ *See* Maillog 227265 ("Notice of Suspension of Procedural Schedule") at 1.

¹⁰ *See* Maillogs 227293, 227291, and 227294.

¹¹ *See* Maillog 227292 ("BGE Joint Motion").

¹² BGE Joint Motion at 1.

28, 2019, Staff filed Rebuttal Testimony addressing BGE’s SOS Administrative Adjustment.¹³

On October 28, 2019, the Commission issued a Notice of Amended Procedural Schedule, which provided for review of the uncontested issues in the Settlement and the sole contested issue of the SOS Administrative Adjustment.¹⁴ On November 1, 2019, C.P. Crane filed testimony in support of the settlement.¹⁵ On November 8, 2019, Walmart, Inc., Staff, OPC, BGE, and H.A. Wagner, LLC filed testimony in support of the Settlement.¹⁶ On November 8, 2019, ESC filed rejoinder testimony.¹⁷

On November 14, 2019, the Commission held an evidentiary hearing to address the remaining litigated issue and to consider the Settlement. On November 27, 2019, BGE filed a Brief that summarized the Parties’ positions on the contested issue of the SOS Administrative Adjustment and argued for an adjustment based on BGE’s Cost of Service Study.¹⁸ Additionally, Staff,¹⁹ OPC²⁰, and ESC²¹ all filed briefs summarizing each of their positions on the contested issue.

II. SETTLEMENT AGREEMENT

A. Summary

BGE, Commission Staff, OPC, Walmart, Inc., DOD/FEA, MEG, H.A. Wagner, and C.P. Crane (collectively the “Settling Parties”) filed a *Joint Motion for Approval of*

¹³ See Maillog 227300.

¹⁴ See Maillog 227301 (“Commission Notice of Amended Procedural Schedule”) at 1-2.

¹⁵ See Maillog 227348.

¹⁶ See Maillogs 227386, 227430, 227429, 227428, and 227418.

¹⁷ See Maillog 227424.

¹⁸ See Maillog 227682.

¹⁹ See Maillog 227690.

²⁰ See Maillog 227689.

²¹ See Maillog 227688.

*Agreement of Stipulation and Settlement.*²² Each party, except for Walmart and H.R. Wagner, also filed testimony in support of the Settlement. Walmart and H.R. Wagner filed letters in lieu of testimony, supporting the Settlement.

The Settlement Agreement provides that BGE will file rate schedules authorizing an electric base rate increase of \$25 million, and a gas base rate increase of \$54 million.²³ The Settling Parties agree to the allocation of electric and gas base rate revenue changes among all classes of electric and gas customers, as well as the electric and gas base rates.²⁴ The Settlement Agreement includes a draft copy of the proposed electric and gas tariff sheets implementing these increases.²⁵ The new electric and gas base rates shall become effective as soon as reasonably practicable following the Commission's issuance of an Order approving the Settling Parties Joint Stipulation and Settlement Agreement.²⁶ The Settling Parties agree to depreciation rates, which BGE shall implement at the same time that the new electric and gas base rates become effective.²⁷ The Settling Parties further agree that, within 60 days of the Commission's approval of the Settlement, BGE will begin providing a one-time bill credit to each electric customer for the electric portion of the January 2018 Tax Cuts and Jobs Act ("TCJA") regulatory liability.²⁸ The aggregate total of one-time bill credits to be provided to the Company's electric customers under this

²² See Maillog 227292. ("Settlement Agreement" or "Settlement")

²³ Settlement Provision no. 2.

²⁴ Settlement Provision no. 3 and Exs. 1-2, attached to the Settlement Agreement.

²⁵ Settlement Exhibits 3-4.

²⁶ Settlement Provision no. 4.

²⁷ Settlement Provision no. 5 and Exhibit 5.

²⁸ Settlement Provision no. 6.

provision totals \$4,716,935.²⁹ Customers who receive service under Schedule PL will also be entitled to a one-time bill credit.³⁰

Additionally, the Settling Parties agree that BGE will make the required filings with the Commission, simultaneously with the filing of the new electric tariff sheets implementing the terms of the Stipulation, to set the ERI surcharge to zero, and the Company making the required filing with the Commission no later than March 31, 2020, to reconcile the 2019 ERI surcharge and program costs.³¹ The Settlement Agreement also provides that the STRIDE surcharge (Gas Service Tariff Rider 16) shall be reset to recover STRIDE investments made on or after October 1, 2019, with the new STRIDE surcharge rate effective the same date as the newly effective gas base rates.³² The Settlement Agreement includes a revised Schedule EG, as agreed to by the Settling Parties.³³ Additionally, BGE agrees to engage in future discussions with Schedule EG customers (after the first full year of operations under the new Schedule EG) regarding whether a more sophisticated communications system is warranted to process requests for delivery of gas service.³⁴

The Settling Parties also agree that BGE will maintain the Distribution Interruption Penalty Price and Excessive Use Distribution Interruption Penalty Price for Schedules IS and ISS at the levels established in Case No. 9484.³⁵ BGE agrees to discuss with Staff, OPC, and other interested stakeholders the possibility of developing a separate rate

²⁹ *Id.*

³⁰ *Id.*

³¹ Settlement Provision no. 7.

³² Settlement Provision no. 8.

³³ Settlement Provision no. 9, and Exhibit 6.

³⁴ *Id.*

³⁵ Settlement Provision no. 10.

schedule for gas-fired electric cogeneration customers.³⁶ Under the provisions of the Settlement, BGE agrees to assign common plant by Federal Energy Regulatory Commission (“FERC”) account for future cost of service studies (“COSS”).³⁷

BGE also agrees that for its next base rate case, the Company shall propose a COSS which is adjusted for advanced meter infrastructure (“AMI”) allocation and large customer service representatives, and which continues to include a one-year demand allocator.³⁸ The Company also agrees to engage in further discussions with stakeholders regarding the cost allocation methodology to be proposed by the Company in future gas COSS for Schedule EG, including approaches consistent with the goal of moving all rate classes closer to the system relative rate of return in order to better reflect the actual costs of service associated with each rate class.³⁹

BGE further agrees, as part of the Settlement, to report at least annually to the Commission on the Company’s use of the Baltimore City conduit system, including related conduit events, repair metrics, and initiatives.⁴⁰ The Company, Staff and OPC agree to engage in additional discussions regarding performance metrics, reporting, and a final true-up of expenses related to the Company’s settlement agreement with Baltimore City for use of the City’s conduit system to serve the Company’s customers.

The Settling Parties agree on a return on equity (“ROE”) for purposes of calculating the Allowance for Funds Used During Construction (“AFUDC”) and all authorized surcharges and regulatory asset carrying costs of 9.70 percent for electric and 9.75 percent

³⁶ Settlement Provision no. 11.

³⁷ Settlement Provision no. 12.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Settlement Provision no. 13.

for gas.⁴¹ The Settling Parties further agree that the rate of return (“ROR”) for purposes of calculating the AFUDC and all authorized surcharges and regulatory asset carrying costs shall be 6.94 percent for electric and 6.97 percent for gas.⁴²

B. Supporting Testimony

1. BGE

Company witness David M. Vahos states that the Settlement Agreement resolves all issues except for the SOS Administrative Adjustment, to which ESC objects.⁴³ He explains that the uncontested issues are not dependent upon the resolution of the contested SOS issue, and ESC does not object to the resolution of the uncontested issues.⁴⁴ Witness Vahos further states that the resolved issues include the determination of BGE’s electric and gas base distribution revenue requirement, rate design, depreciation rates, and the proposed tariff pages containing the new rates that would be effective as soon as reasonably practicable following the Commission’s order approving the Settlement.⁴⁵

Witness Vahos explains that the Settlement Agreement is in the public interest because it balances the diverse interests and needs of various stakeholders, allows BGE to recover the costs of providing service to its customers, and allow the parties and the Commission to avoid the time and expense associated with a full evidentiary hearing.⁴⁶ He states that the agreed-upon specified rates of return allow BGE to determine the cost of capital for the AFUDC, surcharges, and regulatory asset carrying costs.⁴⁷ He further states

⁴¹ Settlement Provision no. 14.

⁴² *Id.*

⁴³ Settlement Testimony of David Vahos at 2.

⁴⁴ *Id.* at 9.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.* at 7.

that the agreed-upon new depreciation rates, by FERC plant account, facilitate BGE's implementation of those rates.⁴⁸ Witness Vahos submits that the \$25 million electric base rate increase and \$54 million gas rate increase are just and reasonable and represent a fair compromise of the Settling Parties.⁴⁹

2. *Staff*

Staff witnesses Jamie A. Smith, David Hoppock, Jason A. Cross, and Benjamin Baker submitted testimony in favor of the Settlement. Witness Smith, Director of the Commission's Accounting Investigations Division, states that the Settlement Agreement terms -- particularly regarding the \$25 million increase in annual electric delivery service revenues, the \$54 million increase in gas delivery service revenues, and the \$4,716,935 one-time bill credit to electric customers -- "are within a range of reasonableness and [will] result in just and reasonable rates."⁵⁰ Witness Smith further states that the Settlement "provides a quicker and less costly resolution" to this matter.⁵¹

Witness Hoppock, Assistant Director of the Commission's Electricity Division, provided testimony regarding Settlement-related electric cost of service issues. He recommends that the Commission accept the Settlement provisions related to the electric cost of service, specifically the agreements to: 1-) conduct future cost of service studies to assign common plant by FERC account, 2-) propose a cost of service study with an adjusted allocation for AMI and large customer service representatives in BGE's next base rate case and a single-year demand allocator, and 3-) meet with Staff and other parties to explore the

⁴⁸ *Id.*

⁴⁹ *Id.* at 8.

⁵⁰ Settlement Testimony of Jamie Smith at 7.

⁵¹ *Id.*

improvement of electric cost of service study (“ECOSS”).⁵² He states that the use of single-year demand allocation factors in BGE’s next base rate case will enable Staff and other parties to compare the single year allocator results with any proposed allocations using multiple-year allocation factors.⁵³ Witness Hoppock deems the Settlement Agreement to be a reasonable compromise that will provide additional information for future BGE cost of service studies “to support cost causation in setting rates.”⁵⁴

Witness Cross, Assistant Director of the Commission’s Telecommunications, Gas and Water Division, explains the portions of the Settlement Agreement pertaining to gas cost of capital, gas cost of service study (“GCOSS”), gas tariff language, and gas revenue allocation and rate design.⁵⁵ He testifies that the Settling Parties reached a reasonable compromise in the proposed gas revenue increase across all steps, with the Step 1 allocation of 10 percent designed to move Schedule C, the only under-earning class, closer to the system average, and the Step 3 allocation of the revenue increase between the combined Schedules IS and EG that balances the elimination of inter-class subsidies with gradualism.⁵⁶ Witness Cross states that the total bill impact of the gas revenue increase and allocations in the Settlement is 4.8 percent.⁵⁷ He further states that the proposed fixed charges for residential customers will increase 1.8 percent, from \$14.00 to \$14.25 per month.⁵⁸

⁵² Settlement Testimony of David Hoppock at 3-4.

⁵³ *Id.* at 4.

⁵⁴ *Id.* at 5.

⁵⁵ Settlement Testimony of Jason Cross at 1.

⁵⁶ *Id.* at 3-4.

⁵⁷ *Id.* at 5.

⁵⁸ *Id.*

Witness Baker, a regulatory economist in the Commission's Electricity Division, provides testimony that analyzes the electric rate design terms of the Settlement Agreement.⁵⁹ He discusses the Settlement Agreement's provision of the \$25 million inter-class revenue allocation for electric customers, stating that revenue is allocated via a two-step methodology.⁶⁰ Witness Baker explains that 25 percent of the revenue would be allocated in the first step, including \$6.25 million allocated to the classes in Schedules R, P and G, under the Settlement Agreement.⁶¹ This proposed allocation is 10 percentage points less than his recommended allocation for those classes and slightly different from Staff's traditional approach to revenue allocation.⁶² Witness Baker states that the remaining \$18.75 million would be allocated to all classes based on revised test year revenues.⁶³ The bill impact of the electric service revenue increase and allocations are presented in Tables 1 and 5 of Witness Baker's Settlement Testimony.⁶⁴ The average bill impact for residential electric customers is 4.73 percent.⁶⁵ The Schedule R (Residential) electric customer charge will increase 1.27 percent, from \$7.90 to \$8.00 per month.⁶⁶ Witness Baker also discusses the proposed demand charges for Schedules GL and P,⁶⁷ proposed volumetric rates⁶⁸, and proposed revenue allocations to Schedule SL.⁶⁹

⁵⁹ Settlement Testimony of Benjamin Baker at 1.

⁶⁰ *Id.* at 3.

⁶¹ *Id.* at 3-4.

⁶² *Id.* at 3-4 and n. 14.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5 and 10, Tables 1 and 5.

⁶⁵ *Id.* at Table 5.

⁶⁶ *Id.* at Table 1.

⁶⁷ *Id.* at 6.

⁶⁸ *Id.* at 6-7.

⁶⁹ *Id.* at 8-9.

Witness Baker provides estimates on the distribution bill impacts of the Settlement, stating that almost all of the effective impacts are below five percent.⁷⁰ He also discusses the Settlement Agreement's handling of the TCJA revenue refund and the ERI surcharge.⁷¹ He recommends that the Commission accept the Settlement, determining that the agreement as a whole is reasonable and in the public interest.⁷²

3. Office of People's Counsel

OPC consultant David J. Effron testifies that OPC supports the Settlement Agreement terms pertaining to the electric and gas revenue increases of \$25 million and \$54 million respectively, despite OPC's proposed differing adjustments.⁷³ He states that differences of opinion on base rates, proper depreciation rates, and rate of return would create litigation risk for OPC and risk to ratepayers.⁷⁴ Witness Effron further states that the Settlement avoids all parties having to incur additional rate case expenses, an avoidance which benefits BGE and its customers.⁷⁵

4. Walmart, Inc.

On November 8, 2019, Counsel for Walmart, Inc. filed with the Commission a letter in lieu of testimony, in full support of the terms of the Settlement.⁷⁶ Counsel states that Walmart, Inc. believes that the Settlement fairly resolves the issues that the company raised in this matter.⁷⁷

⁷⁰ *Id.* at 9.

⁷¹ *Id.* at 10-12.

⁷² *Id.* at 13.

⁷³ Settlement Testimony of David Effron at 1-2.

⁷⁴ *Id.* at 3.

⁷⁵ *Id.*

⁷⁶ *See* Maillog 227427.

⁷⁷ *Id.*

5. *C.P. Crane*

C.P. Crane witness Bernie Schaffler recommends that the Commission accept the Settlement Agreement. He states that the Schedule EG filed with the Settlement Agreement satisfies his previously articulated concerns, as it contains improved communication protocols.⁷⁸ He explains that, per the Agreement, for “day of” gas use requests made by C. P. Crane and the other 14 customers under the Schedule EG, BGE will now provide an initial email that confirms receipt of the request.⁷⁹ He adds that BGE will also provide a substantive email response to the request within 15 minutes that approves, conditionally approves, or denies the request.⁸⁰ BGE’s response may also state that the Company needs additional time to evaluate and respond to the request, and provide a time estimate for the final response.⁸¹

Witness Schaffler states that the Settlement Agreement further provides that BGE and Schedule EG customers will engage in future discussions regarding whether the gas service delivery request process would benefit from a more sophisticated communications system.⁸² He further states that while C. P. Crane has objected to BGE’s ability to issue numerous excessively aggressive penalties against gas distributors, the Settlement provides for fairer treatment of customers “while still ensuring the integrity of the gas distribution system.”⁸³

⁷⁸ Settlement Testimony of Bernie Schaffler at 1.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² *Id.* at 2.

⁸³ *Id.*

6. *H.A. Wagner*

H. A. Wagner, through its counsel, Brian R. Greene, filed a letter in lieu of testimony, supporting the settlement agreement.⁸⁴ Counsel states that H.A. Wagner is one of five electric generation natural gas customers under BGE’s Schedule IS that would transfer to the proposed new Schedule EG.⁸⁵ He further states that H.A. Wagner’s position is that the new Schedule EG is needed to “achieve rates that adhere to equity and cost-causation principles,” because H.A. Wagner and four other electric generation customers are “severely subsidizing” approximately 87 Schedule IS customers.⁸⁶ According to counsel, H.A. Wagner accepts the gradual approach to addressing the subsidization, as well as language providing for further stakeholder discussions regarding future GCOSS for Schedule EG, and the proposed modifications to the Schedule EG tariff.⁸⁷

C. **Analysis and Findings**

The Commission has thoroughly reviewed this Settlement Agreement and, based upon the record before it, the Commission approves the Joint Stipulation and Settlement Agreement, as explained below.

In every rate case, the Commission must find that the resulting rates are just and reasonable both for the utility and its customers and that rates are not an “undue burden to one customer class more than another.”⁸⁸ This rule has been called “the cornerstone of the regulation of public utilities in Maryland.”⁸⁹ The rule applies regardless of whether a case

⁸⁴ See Maillog 227418 at 1.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.* at 2.

⁸⁸ *Re Baltimore Gas and Elec. Co.*, 105 Md. P.S.C 596, 605 (2014) (citations omitted).

⁸⁹ *Office of People’s Counsel v. Maryland Pub. Serv. Comm’n*, 355 MD. 1, 25 (1999).

is contested or settled, and the fact that a settlement has been submitted by the parties does not require the Commission to adopt it.⁹⁰ PUA § 4-101 defines “just and reasonable rate” as follows:

“A rate that (1) does not violate any provision of the article; (2) fully considers and is consistent with the public good; and (3) except for rates of a common carrier, will result in an operating income to the public service company that yields, after reasonable deduction for depreciation and other necessary and proper expenses and reserves, a reasonable return on the fair-value of the public service company’s property used and useful in providing service to the public.”

In determining whether to accept a settlement, the Commission has considered factors such as the avoidance of time and litigation costs associated with rate case proceedings, whether the interests of the settling parties are normally adverse to one another, and the likelihood that the settlement produced results that would be the approximate outcome if the case had been fully litigated.⁹¹

The Settling Parties have agreed to electric and gas base rate increases of \$25 million and \$54 million, respectively. After consideration of the evidence presented by the parties both initially and, as discussed above in specific support of the Settlement, the Commission finds that the agreed-upon rate base increases are just and reasonable and supported by actual evidence of Company property used and useful in providing service to the public.

The Settling Parties have filed a proposed revenue allocation and rate design for both electric and gas, attached to the Settlement Agreement as Exhibits 1 and 2,

⁹⁰ *Id.*; see also, e.g., *Re Verizon Maryland, Inc.* 100 Md. P.S.C. 69, 73 (2009) (rejecting a proposed settlement because it did not serve the public interest and did not meet certain statutory requirements).

⁹¹ *Re Potomac Elec. Power No.*, 93 Md. P.S.C. 134, 137 (2002).

respectively. After consideration of the evidence presented, the Commission finds that the agreed-upon revenue allocation and rate design is just and reasonable to all classes and balances the principle of cost causation with the need for gradualism in rate-making. The Settling Parties have also filed proposed tariff sheets implementing these increases, attached to the Settlement Agreement as Exhibits 3 and 4.

The Settlement also included a number of other agreed-upon provisions concerning: depreciation, bill credits for TCJA regulatory liability, the ERI surcharge, the STRIDE surcharge (Gas Service Tariff Rider 16), the creation of Schedule EG, penalty prices for Schedules IS and ISS, the possibility of creating a separate rate schedule for gas-fired electric cogeneration customers, future cost of service studies, the Baltimore City Conduit system, and the use of the rates of return contained in this settlement as precedent. The Commission approves the Settlement language as stated and agreed upon by the parties.

Of note, however, the final numbered section, paragraph 25, of the parties' proposed Settlement reads as follows:

Notwithstanding the foregoing, if a mistake of material nature is discovered by any party prior to the Commission approval of the Stipulation, the Stipulation shall be withdrawn, and all Settling Parties will be given the opportunity to renegotiate. If a new settlement is not achieved, the hearings will proceed and the Company waives the statutory suspension period. If a material mistake is discovered between the Commission's approval of settlement and approval of a compliance filing, all Settling Parties agree to meet within seven (7) days of the discovery to decide whether to abandon the settlement or renegotiate. The Company would agree to waive any statutory suspension periods. For mistakes discovered after approval of compliance filings, the Company may not take any action or file any pleading inconsistent with the settlement until its

next filed rate case unless failure to remedy the mistake would result in bankruptcy or insolvency to the Company. In that event, the Company must file a request to reopen the proceeding and all Settling Parties will have full rights to discovery and evidentiary proceeding.

While the Commission appreciates that the parties may, in the future, seek to enforce paragraph 25 against one another, the Commission is not bound by paragraph 25. Moreover, acceptance of the terms of the Settlement Agreement does not bind the Commission in any way to limit the Commission's ability to exercise at all times its full statutory authority and discretion, including its revisionary power to correct mistakes.

III. SOS ADMINISTRATIVE ADJUSTMENT

A. History of SOS Administrative Adjustment

The contested issue in the present case pertains to the appropriate cost allocation method for calculating the SOS Administrative Adjustment. In 2003, the Commission approved a Settlement Agreement in Case No. 8908, which established a wholesale competitive procurement methodology to implement utility-provided SOS.⁹² An Administrative Charge was adopted at that time which consisted of the following: a utility return component, an incremental cost component, uncollectibles, and an Administrative Adjustment component.⁹³ For BGE's residential customers, the Administrative Adjustment was initially set at 0.90 mills per kWh in accordance with the 2003 Settlement.⁹⁴ In 2009, BGE filed a request with the Commission to modify the Administrative Charge to allow BGE to recover an increase in the Company's cash

⁹² *Re Competitive Selection of Electricity Supplier/Standard Offer Service*, Order No. 78400, 94 MD PSC 113.

⁹³ *Id.* at 118.

⁹⁴ *Id.*

working capital revenue requirement.⁹⁵ The Commission delegated the matter to the Public Utility Law Judge (“PULJ”) Division as Case No. 9221, where the PULJ initially held, in part, that the Administrative Adjustment component should be eliminated entirely. BGE, Staff and the Retail Energy Suppliers Association (“RESA”) appealed the *First* Proposed Order, successfully arguing that “the elimination of the Administrative Adjustment Component prevents the creation of a competitive retail electricity supply market, and ... does not comport with market price standard set out in [Maryland Code Annotated, Public Utilities Article “PUA”] Section 7-510 (c)(30(iii)(2).”⁹⁶ The Commission agreed with BGE, Staff and RESA and remanded the matter to the PULJ Division. Upon consideration the PULJ’s *Second* Proposed Order—following another appeal—the Commission, in Order No. 87891 in Case No. 9221,⁹⁷ set forth rates for four components of BGE’s SOS Administrative Charge but held (at that time) that the fifth component, the Administrative Adjustment should be set to 0 mills per kWh.

The Commission further directed that in its next base rate case BGE must submit a cost of service study allocating “to SOS any incremental costs caused by SOS that are currently recovered in distribution rates.”⁹⁸ Specifically, the Commission’s Order No. 87891 stated that:

The Administrative Adjustment serves as a proxy for A&G costs retail suppliers must include in their rates, which for the utility are embedded in BGE’s distribution rates. More

⁹⁵ *Brief of Baltimore Gas and Electric Company*, Case No. 9610 filed November 27, 2019 (“BGE Brief”) at 3.

⁹⁶ BGE Brief at 3.

⁹⁷ On Feb. 22, 2017, OPC filed a Petition for Judicial Review of Order No. 87891 [the Commission’s final order in Case No. 9221] and Order No. 87994 [the Commission’s decision on rehearing] in the Circuit Court for Baltimore City. (Case No. 24-C-17-000893) The Circuit Court affirmed the Commission’s decision on Aug. 7, 2017. OPC filed a Notice of Appeal with the Court of Special Appeals on Sep. 5, 2017. A decision by the Court of Special Appeals remains pending.

⁹⁸ Rebuttal Testimony of David Hoppock at 9.

directly, it places into SOS costs – costs that retail suppliers bear and report on FERC reporting forms – that are not fully represented by the incremental costs recovered in the Administrative Charge, such as: costs for billing, marketing and advertisement for customer acquisition; call center operations; product and price formation; hedging supply commitments; electronic data information; PJM membership fees; staffing for human resources; and policy and legal services. The Administrative Adjustment Component was meant to unbundle those incremental costs for SOS that are weaved into BGE’s distribution rates while also keeping the Company’s SOS prices competitive with retail energy suppliers’ costs and prices.⁹⁹

The Commission further stated in Order No. 87891:

We also conclude that the elimination of the Administrative Adjustment Component would put energy retailers at a slight disadvantage and on an uneven playing field relative to BGE. One of the best ways to ensure that retail suppliers’ prices remain competitive with BGE’s SOS is to factor into BGE’s SOS prices the costs that retailers pay and place into the SOS rate, which BGE receives from its embedded distribution rates.¹⁰⁰

In Order No. 87891, the Commission found that it could not glean what a reasonably precise Administrative Adjustment should be based on the record in Case No. 9221, and set its cost at 0 mills/kWh until BGE’s next general rate case.¹⁰¹ In accordance with that directive, BGE filed an SOS cost of service study (“COSS”) and recommended SOS Administrative rates as part of its Application in the present rate case. Staff, OPC and

⁹⁹ *In the Matter of a Request by Baltimore Gas and Electric Company for Recovery of Standard Offer Service Related Cash Working Capital Revenue Requirement*, Case No. 9221, Order No. 87891, 107 MD PSC (2016) 773, 784.

¹⁰⁰ *Id.* at 785.

¹⁰¹ *Id.*

the Energy Supplier Coalition filed testimony supporting varying positions on the appropriate SOS Administrative Adjustment rate.

B. Parties' Positions

1. BGE

In response to the Commission's directive in Order No. 87891, BGE prepared a cost of service study of its electric distribution costs that Company witness Jason Manuel argues could reasonably be functionalized, or allocated to SOS and included in the SOS Administrative Adjustment component of BGE's SOS Administrative Charge.¹⁰² Witness Manuel explains that the SOS Administrative Charge already captures the *incremental* costs associated with providing SOS (under the Incremental Charge Component of the Administrative Charge);¹⁰³ however, the cost of service study prepared and presented in the present case is designed to capture *non-incremental* costs that support SOS but are currently embedded in electric distribution rates.¹⁰⁴

Witness Manuel testifies that "the Administrative Adjustment component of the SOS Administrative Charge represents a proxy for certain costs incurred by third-party electric suppliers to provide electric supply to their customers but are not otherwise included in SOS rates."¹⁰⁵ Witness Manuel acknowledges that the primary purpose of the Administrative Adjustment is to "better align BGE's total SOS price with the electric supply market process, thus 'leveling the playing field' between the Company and informative suppliers."¹⁰⁶ However, Witness Manuel states that since BGE does not have

¹⁰² Settlement Testimony of Jason Manuel at 3-4.

¹⁰³ *Id.* at 4.

¹⁰⁴ *Id.*

¹⁰⁵ Direct Testimony of Jason Manuel at 30.

¹⁰⁶ *Id.*

insight into third-party electric suppliers' costs structures, the Company performed a cost of service study of its own costs that could reasonably be allocated to SOS.¹⁰⁷ During the November 14, 2019 evidentiary hearing, Witness Manuel explains how he attempted to gain more insight into the costs that retailers would bear by submitting a data request of Energy Supplier Coalition; however, that request was refused. Notably, Witness Manuel explains:

The purpose of the cost of service study that I prepared was to develop reasonably precise administrative adjustment rates that represent a proxy of the costs that retail supplies bear. I also kept an eye toward the market rate standard ensuring that the results of my study supported a market price.

I attempted to gain insight into the cost that retail suppliers bear. We asked a data request to that effect and that data request was refused by ESC to be provided to BGE. So I don't have direct insight into the cost that retail suppliers bear.

With that in mind, I turned my focus to the costs that BGE [bears] to support or provide the SOS service. That was the focus of my cost of service study.¹⁰⁸

To begin the process of determining the SOS Administrative Adjustment, Witness Manuel presented the Company's cost of service study it prepared to reasonably allocate SOS costs. Witness Manuel notes that the Company first recognized that all incremental costs incurred to provide SOS were functionalized to the SOS Administrative Charge. Next, he testifies that the Company identified those types of costs and cost centers that support SOS. Then the Company determined a reasonable approach for functionalizing a portion of the non-incremental costs to SOS and allocating those costs by SOS customer

¹⁰⁷ *Id.*

¹⁰⁸ Tr. 18:14-19:7 (Manuel).

classes – Residential, Type I, Type II, and Hourly-Priced Service.¹⁰⁹ Witness Manuel uses two different factors for allocating different costs to SOS. For certain costs, a revenue allocator was used by taking the percentage of 2018 calendar year electric commodity revenues as compared to total electric revenues. For other costs, a time-based allocator was used that examined the total time certain employees spent on SOS-related activities.

Witness Manuel testifies that “the Company identified the following types of non-incremental costs and cost centers as supporting SOS: billing (including the billing system), credit and collections, customer call center, regulatory, accounting, and legal.”¹¹⁰ Witness Manuel further explains that, consistent with SOS incremental costs, the total costs associated with these non-incremental activities “are tracked in unique projects in the Company’s general ledger, which allows the total costs to be analyzed and functionalized to SOS.”¹¹¹ Witness Manuel, in an exhibit to his testimony, provides a quantitative analysis of the cost of service study approach, broken down by cost category and SOS customer class in both dollars and mills per kWh, where all costs were based on the Company’s actual costs incurred in calendar year 2018, which is the same year as the Electric Cost of Service Study (ECOSS). (*See Exhibit No. JMBM-7*)

¹⁰⁹ Manuel Direct at 31.

¹¹⁰ *Id.*

¹¹¹ *Id.*

Exhibit No. JMBM-7

BALTIMORE GAS AND ELECTRIC
Administrative Adjustment Cost of Service Study Allocation Approach

Administrative Adjustment	Residential	Type I	Type II	HPS	Total
Billing System Amortization Expense	\$1,535,786	\$141,787	\$280,515	\$20,916	\$1,979,003
Billing System Unamortized Costs	1,112,920	102,747	203,277	15,157	1,434,101
Credit & Collections	3,422,086	315,933	625,052	46,605	4,409,677
Billing	1,350,647	124,694	246,699	18,394	1,740,435
Call Center	2,060,637	190,242	376,380	28,064	2,655,323
Regulatory	63,063	5,822	11,519	859	81,263
Accounting	12,774	1,179	2,333	174	16,460
Legal	6,620	611	1,209	90	8,530
Total Revenue Requirement	\$9,564,533	\$883,016	\$1,746,984	\$130,259	\$12,324,792
Total Administrative Adjustment	0.99	0.99	0.99	0.99	
MWH (2018 calendar year)	9,671,588	892,899	1,766,538	131,717	
Mills per kWh	0.99	0.99	0.99	0.99	
Recommended Mills per kWh	1.00	1.00	1.00	1.00	

The table below provides a high-level summary of the total revenues allocated to each SOS customer class and the resulting charges.

Table 1: Administrative Adjustment Cost of Service Study Results¹¹²

	<u>Residential</u>	<u>Type I</u>	<u>Type II</u>	<u>Hourly</u>
Total Allocated Revenue	\$ 9,564,533	\$ 883,016	\$ 1,746,984	\$130,259
MWH (2018 calendar year)	9,671,588	892,899	1,766,538	131,717
Mills per kWh	0.99	0.99	0.99	0.99

The Company’s cost of service study approach resulted in a 0.99 mills per kWh charge across all SOS customer classes. However, the Company recommended that the Commission “approve a 1.00 mill per kWh Administrative Adjustment for all of BGE’s SOS customer classes” for three reasons. First, Witness Manuel argues that this result is consistent with his testimony and data. Second, Witness Manuel states that by rounding up the amount to 1.00 mill per kWh, he is acknowledging that the cost of service study by the Company “is not surgically precise but can be used by the Commission to set the Administrative Adjustment at a reasonable level for years to come, pending the need for another study.”¹¹³ Last, Witness Manuel notes that the rounded-up 1.00 mills per kWh, represented an 11 percent increase since the Administrative Adjustment was first set at 0.90 mills per kWh in accordance with the Case No. 8908 Settlement Agreement executed in 2002.¹¹⁴ Witness Manuel reiterates that the Administrative Adjustment is only a proxy for third-party supplier costs and argues that “while suppliers’ costs cannot possibly be known due to their competitively sensitive nature, the allocated costs approach taken by

¹¹² Table 1 reflects the results reported in Table 7 of the Manuel Direct Testimony at page 34.

¹¹³ Manuel Direct at 35.

¹¹⁴ *Id.*

BGE provides a rational foundation for setting a just and reasonable Administrative Adjustment for the indefinite future.”¹¹⁵ Witness Manuel notes that the Company attempted, through data requests, to get more accurate cost information from the suppliers on which to formulate a proxy, but those requests were not provided.¹¹⁶ Therefore, Witness Manuel argues that the allocated cost approach taken by BGE provides a rational foundation for setting a reasonably precise Administrative Adjustment.¹¹⁷ Witness Manuel also recommends that, consistent with the 2003 Settlement and BGE’s existing Retail Electric Service Tariff, the Company include any Commission-approved Administrative Adjustment rate in the SOS Administrative Charge while crediting the full amount to all distribution customers.

2. *Staff*

In his Direct Testimony, Staff witness David Hoppock testifies that he found BGE witness Manuel’s recommendation and calculations and methods used to separate costs between electric distribution and SOS functions to be reasonable.¹¹⁸ However, Staff notes that it was concerned that the method BGE uses to allocate SOS Administrative Adjustment costs between SOS classes does not follow cost causation for some categories.¹¹⁹ Specifically, Staff points out discrepancies with BGE's method of allocation

¹¹⁵ *Id.*

¹¹⁶ Settlement Testimony of Jason Manuel at 6.

¹¹⁷ *Id.*

¹¹⁸ Hoppock Direct at 24.

¹¹⁹ *Id.* at 25.

credit and collections and call center and billing costs.¹²⁰ Witness Hoppock proposes to allocate credit and collections based on 2018 uncollected costs, and billing and call center costs based on 2018 SOS customers by class.¹²¹ This resulted in Witness Hoppock proposing some adjustments to BGE’s allocation of SOS Administrative Adjustment costs and BGE’s SOS Administrative Adjustment rate.

Witness Hoppock further refines his cost allocations and testifies that while Order No. 87891 does not state how BGE should allocate costs currently embedded in distribution rates between SOS and distribution, Staff witness Schultz previously addressed this topic in his Reply Testimony in Case No. 9221. “Specifically, [w]itness Schultz recommended allocating FERC accounts 903, 907, 908, 909 and 910 based on the proportion of the Company’s total electric revenues that come from providing SOS service.”¹²² Witness Hoppock adopts and incorporates Witness Schultz’s recommendations—in this case—of providing further costs allocation attributable to SOS in those FERC accounts. Additionally, Witness Hoppock proposes “that any directly identifiable incremental SOS costs in BGE distribution rates be assigned to the SOS Administrative Adjustment.”¹²³

Regarding call center costs, Mr. Hoppock notes that ESC witness Peterson proposes to add energy assistance and “Start, Stop, and Move” calls to the SOS-related calls because retail suppliers do receive such calls.¹²⁴ Witness Hoppock concludes that since retail

¹²⁰*Id.* “For example, BGE’s method to allocate credit and collections costs based on 2018 SOS sales by class allocates \$46,605 in credit and collections costs to the Hourly Priced Service (“HPS”), but HPS class had no uncollected costs in 2018.” Regarding the allocation of call center and billing costs, Mr. Hoppock points out that the NARUC cost allocation manual suggests allocation of costs based on the number of customers or number of meters and in the ECOSS BGE allocates Account 903, customer records, and collection expenses based on the number of customers.

¹²¹*Id.*

¹²² Hoppock Rebuttal at 10-11.

¹²³ *Id.* at 11.

¹²⁴ *Id.* at 12.

suppliers are likely to incur these types of call center costs, these costs should be added to the allocation method.¹²⁵

For FERC Account 909 Informational and Instructional Advertising Expense, Witness Hoppock testifies that BGE's response to a data request indicated that the Company incurs no SOS costs included in FERC Account 909; however, retail suppliers likely incur informational expenses.¹²⁶ Therefore, Witness Hoppock proposes to allocate the expenses in this account between SOS and distribution.¹²⁷

For FERC Account 910 Miscellaneous Customer Service and Information Expense, BGE identified only \$954 in SOS costs for this account; however, Witness Hoppock notes that BGE has identified specific costs BGE incurs related to SOS in this account. Therefore, Witness Hoppock proposes these costs be characterized as incremental costs and directly assigned to SOS.¹²⁸

For FERC Account 920 Administrative and General Salaries, BGE identified \$174,712 in SOS costs included in this account. However, Witness Hoppock states that he conservatively estimates that the additional incremental costs BGE incurs from SOS in this account is \$68,459.¹²⁹ Therefore, Witness Hoppock contends that the additional \$68,459 should be characterized as incremental costs and directly assigned to SOS.¹³⁰

For FERC Account 921 Offices Supplies and Expenses, BGE identified \$78,682 in costs included in this account. However, since BGE has identified specific costs related to

¹²⁵ *Id.*

¹²⁶ *Id.* at 14.

¹²⁷ *Id.*

¹²⁸ *Id.* at 14.

¹²⁹ *Id.*

¹³⁰ *Id.*

SOS in this account, Witness Hoppock also proposes to characterize these costs as incremental costs and directly assign them to SOS.¹³¹

For FERC Account 923 Outside Services Employed, BGE identified \$48,321 in SOS costs included. However, because BGE has identified specific costs related to SOS in this account, Witness Hoppock proposes to characterize these costs as incremental costs and directly assign them to SOS.¹³² Witness Hoppock admits that some portion of these costs may also reflect costs incurred by a retailer which he had not yet identified.¹³³

The FERC Account 930.2 Miscellaneous General Expenses includes “labor and expenses incurred in connection with general management of the utility not included in other accounts.”¹³⁴ While BGE’s response to a data request indicates that it does not incur general management expenses, Witness Hoppock notes that retail suppliers do incur general management expenses. Therefore, Witness Hoppock recommends allocating this account based on revenue.¹³⁵

FERC Account 391 includes costs of office furniture, furnishing, and equipment.¹³⁶ Witness Hoppock proposes to allocate Account 391 plant based on revenue, and then take the percentage of the allocated Account 391 SOS plant relative to total general plant to determine the general plant depreciation and amortization expense that should be allocated to SOS.¹³⁷ Witness Hoppock also proposes to include load profiling and settlement costs in providing SOS. Witness Hoppock notes that BGE incurs these costs as an electric

¹³¹ *Id.* at 15.

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.* at 16.

¹³⁵ *Id.*

¹³⁶ *Id.* at 17.

¹³⁷ *Id.* at 18.

distribution company and that retail suppliers pay BGE for these costs as part of the Electricity Supplier Charges in the Electric Supplier Coordination Tariff.¹³⁸ Witness Hoppock proposes to allocate these costs based on peak load contribution of SOS relative to total peak load contribution.¹³⁹

Staff's position on the appropriate SOS cost allocation changed several times throughout the proceeding. Ultimately, Staff recommends a total cost of approximately \$15.9 million be allocated to SOS¹⁴⁰ as compared to BGE total costs of \$12.3 million. The difference is attributable to a limited number of specific cost categories. Specifically, Staff allocated additional call center costs to SOS for "Start, Stop and Move Service" calls, which are calls inquiring about energy assistance programs and "General Business Inquiry" calls. Second, Staff allocated costs from the following categories that were not included by BGE: FERC Account 909, FERC Account 930.2, General Plant Depreciation Amortization Account 391, and Load Profiling and Settlement Costs. Staff also proposes a different allocation of costs among the SOS classes.¹⁴¹ "BGE's proposed rates reflect an allocation of all costs by sales volumes, which results in the same rate by customer class. Staff's proposed rates reflect an allocation of costs among classes incorporating different allocators."¹⁴²

¹³⁸ *Id.* at 20.

¹³⁹ *Id.*

¹⁴⁰ Exhibit 1. Staff SOS Administrative Adjustment Allocation and Resulting Rates Without Additional Accounts 910, 920, 921 and 923 Incremental Costs in Hoppock Settlement Testimony filed November 8, 2019.

¹⁴¹ BGE Brief at 10.

¹⁴² *Id.*

In his Rebuttal, Surrebuttal, and in the Supplemental Settlement Testimony, Witness Hoppock revises Staff’s allocations to the SOS Administrative Adjustment resulting in the proposed SOS Administrative Adjustment rates:

	<u>Residential mills per kWh</u>	<u>Type 1 mills per kWh</u>	<u>Type 2 mills per kWh</u>	<u>HPS mills per kWh</u>
Rebuttal	1.37	1.17	0.46	0.33
Surrebutal	1.46	1.25	0.49	0.36
Supplemental Settlement	1.44	1.23	0.47	0.35

Witness Hoppock also recommends that "rather than reimburse distribution customers for SOS Administrative Adjustment costs allocated to SOS but simultaneously recovered from distribution rates, BGE should remove costs allocated to the SOS Administrative Adjustment from distribution rates."¹⁴³ Staff argues this approach would be consistent with Commission Order No. 87891 in Case No. 9221. To effectuate this change, Witness Hoppock recommends that the Commission require BGE to file an adjustment to distribution rates at the conclusion of this case after the SOS Administrative Adjustment rates are set, to remove all costs allocated to the SOS function from distribution rates and collect these costs through the SOS Administrative Adjustment.¹⁴⁴

¹⁴³ Hoppock Direct at 27.

¹⁴⁴ *Id.* at 27-28. In his Surrebutal, Witness Hoppock stated “Staff agrees to allow BGE to continue to use Rider 10 to reimburse customer for SOS Administrative Adjustment costs recovered through the SOS Administrative Charge to prevent over or under reimbursement of distribution customers. However, as explained in my direct testimony, Staff maintains that Order No. 87891 requires a separation of SOS costs from distribution rates, and Staff reserves the right to raise this issue in the future.” Surrebutal Testimony of David Hoppock at 16. Additionally, Staff notes in its Brief that “Witness Hoppock did not further advocate a distribution rate decrease, instead opting to retain the existing structure featuring reimbursement of Administrative Adjustment revenues to distribution customers (Rider 10).” *Brief of Staff Counsel*, Case No. 9610 filed November 27, 2019 (“Staff Brief”) at 19.

3. *Energy Supplier Coalition*

ESC companies operate competitive retail electric and gas supply businesses in Maryland and its members compete directly with BGE's Standard Offer Service for electricity and natural gas.¹⁴⁵ SOS “is available to customers who do not purchase their electricity from competitive suppliers in the market.”¹⁴⁶ ESC's interest in Case No. 9610 is “to ensure that BGE's rates for SOS reflect the full cost of providing that service so that customers are able to make more accurate comparisons when shopping for electricity supply.”¹⁴⁷

ESC argues that BGE has failed to allocate all costs to the SOS rate that are incurred to provide the service.¹⁴⁸ Specifically, ESC argues that BGE, in proposing an Administrative Adjustment of 1.00 mills per kWh, which is equal to only one-tenth of one cent per kWh, omits major cost categories and significantly understates other cost allocations.¹⁴⁹ ESC contends that BGE has included many of its costs for providing SOS service in its distribution rates causing distribution customers to subsidize SOS rates. This results—it argues—in BGE's SOS rates being too low and accordingly unfairly biases customers toward SOS and establishes a distribution rate that is above what a cost-based rate should be.¹⁵⁰ ESC argues that the elimination of this subsidy will improve the retail market, thereby giving customers more competitive supply options.¹⁵¹

¹⁴⁵ Direct Testimony of Frank Lacey at 4.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 5.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

¹⁵¹ *Id.*

To correct the problem, ESC seeks to utilize the current Administrative Charge and Administrative Adjustment mechanism “for its intended purpose,” and to fully and equitably allocate the costs that are currently classified as distribution costs but are clearly used for the provision of SOS.¹⁵² Using the Administrative Charge and Administrative Adjustment mechanism, ESC witness Peterson calculates the allocation to the Administrative Adjustment for residential customer class to be \$114,299,607 as compared to BGE's proposed allocation of \$9,564,533.¹⁵³ Based on its fully unbundled costs, ESC proposes to allocate \$173.1 million of costs to SOS – a substantial amount over the costs recommended by BGE or Staff.

BGE proposed an allocation to the Administrative Adjustment of 1.00 mill per kWh to each of the SOS customer groupings (Residential, Type I, Type II and HPS). ESC witness Peterson's analysis shows that the allocation to the Administrative Adjustment should be 11.82 mill per kWh to residential customers and 21.06 mill per kWh to each of the C&I (commercial and industrial) rate classes.¹⁵⁴ Translated to cents, the SOS rate for residential customers would increase by 1.18 cents per kWh, while the SOS rate for business customers would increase by 2.11 cents per kWh."¹⁵⁵ Witness Peterson also includes an alternative calculation that mirrors BGE's approach to assigning the allocated costs based on a per-kWh basis, and the alternative calculation results in the SOS Administrative Adjustment being 13.89 mill, per kWh for all customer classes.¹⁵⁶ ESC argues that BGE's current price for SOS, 6.558 cents per kWh for the residential customer

¹⁵² *Id.* at 6.

¹⁵³ *Id.*

¹⁵⁴ *Id.* at 9-10.

¹⁵⁵ *Id.* at 19.

¹⁵⁶ *Id.* at 10

class, is understated by approximately 18 percent.¹⁵⁷

ESC argues that BGE does not apply its own cost allocation philosophy to the cost of providing SOS.¹⁵⁸ ESC argues that BGE has materially understated the amount of costs that it incurs in the provision of SOS.¹⁵⁹ Notably, BGE did not include many of the cost items detailed in Order No. 87891, such as staffing for human resources, marketing and advertisement, product and price formation, electronic data information or PJM membership fees. Its allocation for regulatory and legal services is unrealistically low. Similarly, its call center allocations were also unjustifiably low.¹⁶⁰ Witness Peterson states: “Based on my review of BGE's presentation, I believe BGE's computation of only 1.00 Mill per kWh for the Administrative Adjustment is significantly understated, and falls short of meeting the letter and spirit of the Commission Order.”¹⁶¹ He further argues that BGE has omitted significant administrative and general expenses from its computation of the Administrative Adjustment, including costs of corporate governance, IT, HR and other outside services.¹⁶² Witness Peterson states that BGE's approach to allocating costs to the Administrative Adjustment is reasonable, but the actual computation of the Administrative Adjustment is flawed.¹⁶³

ESC Witness Lacey argues that the only party in this proceeding that has performed the unbundling directed by the Commission using a fully allocated cost approach is the

¹⁵⁷ *Id.* at 19.

¹⁵⁸ *Id.* at 34.

¹⁵⁹ *Id.* at 46.

¹⁶⁰ *Id.* at 46.

¹⁶¹ Direct Testimony of Chris Peterson at 6.

¹⁶² *Id.*

¹⁶³ *Id.* at 9

Coalition, which allegedly examined all of BGE's indirect costs, identified the resources that are used to support or provide SOS, and allocated a portion of each of those categories to SOS.¹⁶⁴ Witness Lacey notes that Company witness Manuel concedes that BGE did not fully unbundle its costs because that exercise would have been too complex and was unnecessary to establish a market-based SOS rate.¹⁶⁵ ESC also contends that for the Commission to accomplish the objectives set forth in Order No. 87891, it must adopt ESC's solution. By adopting that solution, the current practice of BGE's using its distribution rates to subsidize SOS will cease and "the Commission can finally ensure that SOS is being provided at a more market reflective price as required by Section 7-510 (c)(3)(ii)(2) of the Public Utility Article."¹⁶⁶

4. *Office of People's Counsel*

OPC contends that the positions taken by these three parties do not provide the type of unbundling of costs requested by the Commission in Case No. 9221 and are unsupported by sufficient evidence in the record.¹⁶⁷ OPC argues that "the cost of service studies presented by the [BGE, Staff and ESC] are incomplete for the purpose of setting a reasonably precise SOS Administrative Adjustment for Residential SOS and would create interclass subsidies."¹⁶⁸ Specifically, OPC opposes BGE's proposal of 1.00 mill per kWh for the SOS Administrative Adjustment and the method used to calculate the rate.¹⁶⁹ OPC states that the purpose of the SOS Administrative Adjustment is to "level the playing field"

¹⁶⁴ Supplemental Settlement Testimony of Frank Lacey at 4.

¹⁶⁵ *Id.* at 7.

¹⁶⁶ *Id.* at 4.

¹⁶⁷ *Brief of Office of People's Counsel*, Case No. 9610 filed November 27, 2019 ("OPC Brief") at 7.

¹⁶⁸ *Id.*

¹⁶⁹ Direct Testimony of Clarence Johnson at 30-33.

in the competitive market. OPC suggests that amortized and unamortized billing system costs should not be included in the SOS Administrative Adjustment because BGE would require the investment of a billing system regardless of the existence of SOS.¹⁷⁰ OPC argues that BGE's proposed SOS Administrative Adjustment will create an intra-class subsidy from SOS customers to retail choice customers.¹⁷¹ Nonetheless, OPC does not propose an alternative SOS Administrative Adjustment, leaving the SOS Administrative Adjustment to remain at 0.00 mill per kWh.

C. Commission Decision

In Order No. 87891, the Commission determined that retaining the Administrative Adjustment would help level the playing field between utility provided-SOS rates and competitive retail suppliers, but it also made clear that an Administrative Adjustment rate only serves as a “proxy” for administrative and general costs retail suppliers must include in their rates, which are embedded in the distribution rates of utility companies. BGE, Staff, and ESC presented different cost of service studies resulting in a wide range of proposals for the SOS Administrative Adjustment rate. The recommended rates range from BGE’s \$12.3 million to Staff’s final position on Rejoinder of \$15.9 million to ESC’s proposal of \$173.1 million. OPC did not present a cost of service study or endorse any of the other parties’ proposals. Therefore, OPC would maintain the status quo and keep the SOS Administrative Adjustment rate at 0.00 mills per kWh.

ESC’s recommendation to allocate \$173.1 million of non-incremental costs to SOS is a significant departure from prior Commission decisions setting an appropriate

¹⁷⁰ *Id.* at 33.

¹⁷¹ *Id.* at 34.

Administrative Adjustment. BGE noted that to arrive at its \$173.1 million of non-incremental costs, ESC “allocated unreasonably large percentages of electric distribution (“cost pools”) to the SOS business.”¹⁷² For example, ESC allocated nearly \$60 million of administrative and general overhead and \$80 million of electric distribution depreciation and amortization expense. BGE argues out that the SOS business is not “capital intensive” or “labor intensive” and doesn’t justify ESC’s expense allocation.¹⁷³ ESC argues that its analysis, unlike BGE’s or Staff’s, fully unbundles SOS costs from distribution costs and therefore more closely aligns with the directive in Order No. 87891. However, the Commission did not direct BGE to perform a full unbundling of SOS costs; rather, the Commission requested that a “cost of service study should be presented to reflect more precisely which costs should be properly allocated in distribution rates and which costs should be properly allocated in SOS.”¹⁷⁴ The Commission’s Order calls for the SOS Administrative Adjustment to be reasonably precise, not a full unbundling as argued by ESC. BGE has presented a cost of service study in response to the Commission’s request.

OPC does not present a cost of service study and does not endorse any of the other proposals offered by other parties, thereby suggesting that the Commission maintain the status quo and set the SOS Administrative Rate to 0.00 mills per kWh. OPC’s position is inconsistent with the Commission’s directive of Order No. 87891 to retain the SOS Administrative Adjustment and become reasonably precise to yield a more market reflective price.

¹⁷² BGE Brief at 14.

¹⁷³ *Id.*

¹⁷⁴ Order No. 87891 at 25.

Using the language of Order No. 87891 as a guide, BGE identified four high level cost centers with non-incremental costs that support SOS and allocated as follows:

Billing systems: BGE functionalized a portion of the electric distribution billing system costs (both amortization of the billing system and the unamortized costs in rate base) using a revenue allocator.¹⁷⁵

Billing, credit & collections: BGE identified the billing and credit & collections projects that support SOS, then functionalized a portion of the electric distribution costs for those projects to SOS using a revenue allocator.¹⁷⁶

Customer call center: BGE used data from its interactive voice response (IVR) system to first determine the percentage of incoming calls from customers that related to billing or credit & collections. BGE applied this percentage to the customer calls center's electric distribution expenses first, and then further functionalized to SOS using the revenue allocator.¹⁷⁷

Regulatory, accounting & legal: BGE personnel from these areas were asked to identify their SOS-related tasks/deliverables and then estimate time they spent on each activity. Based on this information, the functionalization factor for each area was derived by multiplying the percentage of time spent per employee during the year on SOS-related activities by the respective cost center expenses recorded in the general ledger.¹⁷⁸

The Commission finds that BGE's approach is reasonable. BGE's cost of service method and allocation was well-reasoned and followed the Commission's directive in Order No. 87891. However, BGE's approach does not examine certain of the SOS costs incurred with the FERC Accounts enumerated in Order No. 87891, as discussed in Staff's SOS Administrative Adjustment cost allocation method. These include: FERC Account

¹⁷⁵ Manuel Direct at 31.

¹⁷⁶ *Id.* at 32.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.* at 33.

909 Informational and Instructional Expense, FERC Account 910 Miscellaneous Customer Service, Account 920 Administrative and General Salaries, Account 921 Office Supplies and Expenses, Account 923 Outside Services, Account 930.2 Miscellaneous General Expenses, General Plant Depreciation Amortization Account 391, and Load Profiling and Settlement Costs.

The Commission does not, however, find that Staff witness Hoppock's reasoning for additional allocation of call center "Start, Stop and Move" or "General Business Inquiry" costs are sufficiently supported or appropriate and therefore rejects those additions to BGE's cost of service allocation. Regarding the other additional cost categories, the Commission notes that BGE witness Manuel agreed that the inclusion of FERC Account 909, 930.2, and Load Profiling may be reasonable to allocate a portion of General Plant Depreciation Amortization Account 391 to SOS, as this utility account relates to office furniture and equipment that is used by all BGE employees, including the few employees directly supporting SOS activities.¹⁷⁹ However, the Commission finds that Staff did not adequately support its allocation of costs from FERC Account 909 (Informational and Instructional Advertising Expense) and FERC Account 930.2 (Miscellaneous General Expense). These should be excluded, as none of the expenses in either account relate to SOS.¹⁸⁰ During the hearing, Witness Hoppock conceded that he did not have specific documentation to support these costs but believed these were costs likely to be borne by retail suppliers.

¹⁷⁹ BGE Brief at 13.

¹⁸⁰ Tr. 127:11-128:2 (Commissioner Herman questioning of Staff witness Hoppock.)

Consequently, the Commission finds that the appropriate cost allocation method at this time is a hybrid approach that combines portions of BGE's and Staff's SOS Administrative Adjustment. Specifically, the Commission accepts the total costs and revenue allocations of BGE for the following cost categories: Billing System Amortization Expense (\$1,979,003), Billing System Unamortized Costs (\$1,434,101), Credit & Collections (\$4,409,677), Billing (\$1,740,435 million), Call Center (\$2,655,323 million), Regulatory (\$81,263), Accounting (\$14,460), and Legal (\$8,530). The Commission also accepts Staff's inclusion of FERC Accounts 909 (\$468,811), FERC Account 930.2 (\$260,175), General Plant Depreciation Amortization (\$133,774), and Load Profiling and Settlement Costs (\$382,097). The Commission's determination to adopt BGE's costs allocations, as modified in part by Staff as discussed above, results in \$13,569,649 in costs to be allocated to SOS. The Commission also adopts BGE's "normalized" allocation method, which computes the mills per kWh as the same across each customer class (and is computed to be 1.09 mills per kWh). The Commission's determination for each cost component comprising the SOS Administrative Adjustment is represented below in Exhibit 1 – Commission Hybrid Approach in the Commission Decision column.

V. ORDERING CLAUSES

IT IS THEREFORE, this 17th day of December, in the year of Two Thousand Nineteen, by the Public Service Commission of Maryland,

ORDERED: (1) That the Application of Baltimore Gas & Electric Company, filed on May 24, 2019, seeking to increase electric distribution rates by \$81.1 million and gas distribution rates by \$67.6 million in its Maryland service territory is hereby denied;

(2) That the Joint Motion for Approval of Agreement of Stipulation and Settlement (Settlement) is granted;

(3) That the Company shall file new tariffs that increase rates by no more than the amounts approved above and agreed in the Settlement effective as of the date of this Order, which shall be subject to Commission Staff verification, and Commission acceptance; and

(4) That the Company shall file tariffs allocating a total of \$13,569,649 in its indirect costs to Standard Offer Service that are currently embedded in BGE's distribution rates and set a normalized distribution SOS Administrative Adjustment rate of 1.09 mills per kWh.

/s/ Odogwu Obi Linton _____

/s/ Anthony J. O'Donnell _____

/s/ Mindy L. Herman _____

Commissioners

Exhibit 1 – Commission Hybrid Approach

Administrative Adjustment	BGE Total Cost Allocated to SOS	STAFF (Surrebuttal) Total Cost Allocated to SOS	STAFF (Settlement) Total Cost Allocated to SOS	ESC Total Cost Allocated to SOS	Commission Decision Total Cost Allocated to SOS
Billing System Amortization Expense	1,979,003	1,979,003	1,979,003	1,979,003	\$1,979,003
Billing System Unamortized Costs	1,434,101	1,434,101	1,434,101	1,434,101	1,434,101
Credit & Collections	4,409,677	4,409,677	4,409,677	4,409,677	4,409,677
Billing	1,740,435	1,740,435	1,740,435	1,740,435	1,740,435
Call Center	2,655,323	5,006,641	5,006,641	4,013,555	2,655,323
Regulatory	81,263	81,263	81,263	1,103,401	81,263
Accounting	16,460	16,460	16,460	16,460	16,460
Legal	8,530	8,530	8,530	1,244,717	8,530
Customer Accounts Expenses				18,499,988	
Customer Service & Info Expenses				1,652,812	
Administrative & General Expenses				58,986,317	
Depreciation and Amortization				77,766,494	
Allowed Return on Working Capital				227,492	
FERC Account 909		468,811	468,811		468,811
FERC Account 910		1,792			
Additional FERC Account 920 Expenses		96,467			
FERC Account 921		78,682			
FERC Account 923		52,460			
FERC Account 930.2		260,175	260,175		260,175
General Plant Depreciation Amortization Acc 391		133,774	133,774		133,774
Load Profiling and Settlement Costs		382,097	382,097		382,097
Total	\$12,324,792	\$16,150,367	\$15,920,967	\$173,074,451	\$13,569,649
Mills per kWh (Residential)	1.00	1.46	1.44	11.82	1.09