

**ORDER NO. 89403**

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. 9609  _____
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**Issue Date: December 18, 2019**

**ORDER ON APPEAL**

On May 22, 2019, Columbia Gas of Maryland, Inc. (“Columbia Gas” or “the Company”) filed an application with the Commission, with accompanying testimony and exhibits, in which it sought a \$3.65 million increase in its base rates for the distribution of natural gas to its customers, based upon a partially projected test year ending June 30, 2019.<sup>1</sup> The Commission suspended the Company’s proposed tariff revisions and delegated the matter to the Public Utility Law Judge Division for evidentiary proceedings.<sup>2</sup>

On September 19 and 20, 2019, Public Utility Law Judge (“PULJ”) Kristin Case Lawrence held an evidentiary hearing during which the Staff of the Public Service Commission (“Staff”), the Maryland Office of People’s Counsel (“OPC”), and Columbia Gas each submitted testimony and exhibits in support of their positions. On November 5, 2019, the PULJ issued the Proposed Order in which she approved a rate increase of

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<sup>1</sup> Columbia Gas of Maryland, Inc. Application for Authority to Increase Rates and Charges. (Maillog 225407).

<sup>2</sup> See Order No. 89135 dated May 23, 2019. On July 30, 2019, Columbia Gas filed supplemental testimony and exhibits to update its test year data from a combination of eight months of actual data and four months of estimated data, to a full 12 months of actual data. Subsequently, Staff and OPC filed direct testimony and exhibits, followed by the filing of rebuttal and surrebuttal testimony by all parties.

\$1,843,721 for gas service rendered on or after December 18, 2019.<sup>3</sup>

### **Staff and OPC Appeals**

On November 19, 2019, Staff and OPC each filed a Notice and Memorandum on Appeal under Public Utility Article (“PUA”), *Annotated Code of Maryland* § 3-113(d)(2) and COMAR 20.07.02.13. On November 25, 2019, Columbia Gas submitted its Reply Memorandum. Staff and OPC appealed certain issues in the Proposed Order, which determined, among other things, that the Net Salvage Value<sup>4</sup> component of Columbia Gas’ depreciation expenses should be calculated by employing the SFAS<sup>5</sup> 143 Present Value Method (“PVM”) coupled with a 2.5 percent discount rate. In determining Columbia Gas’ Net Salvage Value, the PULJ found that 2.5 percent was an accurate estimate of the rate of future inflation. OPC and Staff appeal this conclusion, asserting that the PULJ erred by not adopting the authorized Rate of Return (“ROR”) for Columbia Gas as the discount factor. Columbia Gas filed a Reply Memorandum, urging the Commission to affirm the Proposed Order.

Additionally, Staff appeals the allowance of recovery for post-hearing expenses associated with the rate case. OPC separately appeals the PULJ’s authorization of rate recovery of all costs associated with the environmental remediation of the 5.82 acre Cassidy Property.<sup>6</sup>

This Order affirms the Proposed Order’s findings as to the recovery of Columbia

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<sup>3</sup> An Errata to the November 5, 2019 Proposed Order issued on November 8, 2019 (Maillog 227415), slightly reduced the approved rate increase to \$1,835,235.

<sup>4</sup> “Net Salvage Value” is the value of an asset at the end of its depreciation, determined by removing the costs of disposal from the estimated after-tax sale.

<sup>5</sup> SFAS is the Statement of Financial Accounting Standards, which are issued by the Financial Accounting Standards Board (FASB).

<sup>6</sup> Located in Hagerstown, Maryland, the Cassidy Property was formerly used to provide gas service to Columbia’s customers.

Gas' rate case expenses and environmental remediation costs. However, the Commission reverses its finding that 2.5 percent was the proper discount factor. Based upon the record in this case, the Commission concludes that there is insufficient evidence on which to rely to deviate from prior precedent. Therefore the Commission concludes here that the discount value should equal Columbia Gas' overall ROR, which is 7.26 percent.<sup>7</sup>

#### **A. Discount Rate for Calculating Net Salvage**

##### *1. Staff*

Staff does not dispute Columbia Gas' proposed net salvage expense of 15 percent based upon its experience in retiring facilities between 1969-2018.<sup>8</sup> The Proposed Order approved this 15 percent expense. Staff also supports the PULJ's use of the SFAS 143 or PVM to calculate salvage expense. However, based largely upon Commission precedent, Staff contends that the PULJ erred by using the cost of inflation (determined by the PULJ to be 2.5 percent) rather than Columbia Gas' ROR as the appropriate discount factor.<sup>9</sup> Staff therefore argues that the PULJ should have used Columbia Gas' 7.32 percent ROR as the appropriate discount factor.<sup>10</sup>

Staff relies upon Commission precedent in supporting its argument to use the ROR as the discount factor, citing Case No. 9481, involving a 2018 rate application by Washington Gas Light Company ("Washington Gas"). In that case the Commission adopted the testimony of Staff Witness Valcarengi, who had testified that "a discount rate

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<sup>7</sup> Proposed Order at 64 (concluding that a 9.6 percent Return on Equity results in an overall ROR of 7.26 percent).

<sup>8</sup> Direct Testimony of John J. Spanos at 13-14; Direct Testimony of Felix L. Patterson at 5.

<sup>9</sup> Patterson Direct at 10.

<sup>10</sup> Staff had urged a Return on Equity that would have resulted in a 7.32 percent ROR. As noted above, the PULJ ultimately found 7.26 percent to be the appropriate ROR. Proposed Order at 64.

equal to the authorized rate of return has been used [by the Commission] to derive present value amounts.”<sup>11</sup> Staff also relies upon Case No. 9103 in which the Commission applied Washington Gas’ approved ROR as the appropriate discount factor in connection with the PVM.<sup>12</sup> Staff contends that the Proposed Order does not provide a sufficient basis to depart from Commission precedent.

Additionally, Staff contends that the Proposed Order ignores the offsetting increase in rates that results from a lower discount factor. Although Staff concedes that a higher discount factor has a higher upward impact on rate of return revenue than a lower discount factor, a higher discount factor also has a larger upward impact on rate base because net salvage expense is a component of depreciation expense, and depreciation expense is deducted from rate base. Staff contends that the Proposed Order fails to adequately address this offsetting factor.<sup>13</sup>

Even assuming that the discount factor should be based upon a forecast of future inflation, Staff contends that the record lacks support for the PULJ’s specific adoption of 2.5 percent as the appropriate future rate of inflation. Specifically, Staff contends that Columbia Gas Witness Spanos simply states that 2.5 percent is the appropriate forecast of future inflation without providing an adequate basis to support this opinion.<sup>14</sup>

## 2. OPC

Like Staff, OPC does not contest the use of the PVM to calculate the value of net

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<sup>11</sup> Case No. 9481, Valcarengi Direct (Maillog 221771) at 13; cited by the Commission in *In re Washington Gas Light Company*, 109 Md. PSC 795, 804 – 805 (2018).

<sup>12</sup> *In re Washington Gas Light Company*, 101 Md. PSC 38, 42 – 43 (2010).

<sup>13</sup> Staff Appeal Memorandum at 4-5.

<sup>14</sup> *Id.* at 5-6 (citing Rebuttal Testimony of John J. Spanos at 65).

salvage. Also like Staff, OPC contends that the PULJ erred by using the rate of inflation (determined to be 2.5 percent) rather than Columbia Gas' overall ROR as the applicable discount factor. Based upon the Proposed Order, if the Commission accepts OPC's argument, OPC contends the appropriate discount rate would be 7.26 percent.<sup>15</sup>

OPC argues that increasing labor costs associated with asset removal, combined with the fact that original costs remain the same, contributes to negative net salvage over time. Negative net salvage exists when the cost of removing the assets exceeds the proceeds received from selling the assets. OPC, through OPC Witness Garrett, contends that a model involving the discounting of inflated future values must have a discount rate that exceeds a company's growth, or inflation, rate.<sup>16</sup> Witness Garrett analogizes this issue to the concepts presented by the Discounted Cash Flow ("DCF") Model. Under the DCF, a company's cash flows (*i.e.*, dividends) are inflated to a future value and then discounted back to present value by a discount rate - the Company's cost of equity.

OPC contends that under the DCF, although parties may disagree on the growth rate, the growth rate will always be less than the discount rate. OPC argues that the DCF Model cannot work unless the discount rate exceeds the growth rate. Similarly, OPC contends that the discount rate must exceed the inflation rate in the PVM.<sup>17</sup> OPC claims that future inflation rates are projected to be approximately 2.0 percent, which is less than the risk-free rate.<sup>18</sup> Because a company's cost of capital will always exceed the risk-free

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<sup>15</sup> OPC Appeal Memorandum at 5.

<sup>16</sup> Surrebuttal Testimony of David J. Garrett at 5.

<sup>17</sup> *Id.* at 5-6.

<sup>18</sup> OPC cites the Congressional Budget Office Long-Term Budget Outlook, <https://www.cbo.gov/publications/51580>. For calculating the risk-free rate, OPC relies upon 30-year Treasury Bond yields. OPC Appeal Memorandum at 7, fn 7.

rate, OPC contends that the discount rate must always exceed the rate of inflation.<sup>19</sup>

OPC disagrees with the PULJ's reasoning that an increased depreciation expense (through use of a lower discount rate) will reduce rate base and thus the money that ratepayers pay on that rate base. According to OPC, allowing utilities to receive their money sooner rather than later encourages them to increase rate base by other means.

OPC also contests the PULJ's conclusion that a higher discount rate unfairly saddles current ratepayers with higher expenses, effectively subsidizing future ratepayers.<sup>20</sup> According to OPC, this error arises from the PULJ basing her calculations on an individual asset's life. However, the accrual of removal costs applies to ongoing flows of money from the installation and retirement of many individual assets in an essentially unending stream. Therefore, there is always more new plant generating higher removal cost charges than old plant that has accumulated removal cost reserve.<sup>21</sup>

Like Staff, OPC also observes that Commission precedent has favored using the utility's overall ROR as the discount factor in the PVM. OPC cites to *In Re Columbia Gas of Md.*<sup>22</sup> as an example of the Commission using the company's ROR rather than the rate of inflation after hearing testimony from witnesses on both sides of the issue. In sum, OPC argues that nine separate Commission orders dating back to 2007 have confirmed that the company's ROR is the proper discount factor when calculating net salvage value.<sup>23</sup>

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<sup>19</sup> Garrett Surrebuttal at 5-6.

<sup>20</sup> Proposed Order at 32. For example, *see* Figure 2, Rebuttal Testimony of John J. Spanos at 52.

<sup>21</sup> OPC relies upon the testimony of Columbia Gas Witness Spanos, Sep. 4, 2019 Hearing Transcript at 91-95; 122-124.

<sup>22</sup> 104 Md. PSC 487, 519 (2013).

<sup>23</sup> OPC Appeal Memorandum at p. 11, fn 52.

### 3. *Columbia Gas*

In its Reply Memorandum, Columbia Gas observes that using its ROR as the appropriate discount factor undermines the rationale upon which the Commission adopted the PVM in 2007. In *Potomac Electric Power Co.*,<sup>24</sup> the Commission adopted the PVM because doing so meant that “today’s ratepayers will pay only their fair share of recovery costs in ‘real’ dollars rather than the inflated amounts under the Straight Line Method of calculating salvage expense.”<sup>25</sup> After observing that “real dollars” mean dollars adjusted for inflation, Columbia Gas relies upon the testimony of Witness Spanos to the effect that using the ROR as the discount factor significantly skews the costs of net salvage away from current ratepayers and onto future ratepayers.<sup>26</sup>

Columbia Gas rejects Staff’s argument that any increase that the PVM may have on rate base is offset by a reduction in depreciation expense. To the contrary, Columbia Gas cites Witness Spanos, whose testimony weighed both factors and still concluded that the PVM costs customers more in rates overall.<sup>27</sup>

Columbia Gas also rejects Staff’s arguments that the record does not contain support for the conclusion that 2.5 percent is the appropriate estimate of future inflation. Columbia Gas observes that neither Staff nor any other party objected to Witness Spanos’ conclusion that 2.5 percent reflects a reasonable estimate of future inflation. Additionally, Columbia Gas observes that the U.S. Bureau of Labor Statistics Report referenced by Staff

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<sup>24</sup> 98 Md. PSC 228 (2007).

<sup>25</sup> *Id.* at 251.

<sup>26</sup> In its November 25, 2019 Appeal Memorandum, Columbia Gas urged the PULJ to abandon the Commission’s prior employment of the PVM and adopt a straight-line/traditional methodology for calculating net salvage value. In the alternative, Columbia Gas urged the PULJ to employ the cost of inflation as the appropriate discount factor. In light of the PULJ’s adoption of 2.5 percent as the discount factor, Columbia Gas does not dispute the PULJ’s findings on this issue or any other issue on appeal.

<sup>27</sup> Spanos Rebuttal at 78-85.

indicates that 2.5 percent is likely a high estimate of future inflation.

Columbia Gas also rejects OPC's analogy of the discount rate in the context of calculating net salvage with the DCF Model. According to the Company, the DCF Model is irrelevant to the subject of depreciation, because depreciation is a model of allocation, not valuation. Columbia Gas argues that the DCF Model has no relevance to the appropriate discount rate for depreciation and submits that, contrary to OPC's urging, a discount rate that exceeds the rate of inflation will result in current customers paying less than their fair share in "real" dollars, which undermines the Commission's stated intention in adopting the PVM in 2007.

Columbia Gas cites to Case No. 9610 in which OPC Witness Dunkel testified that the Commission should not adopt discount rates that result in negative net salvage value.<sup>28</sup> Columbia Gas asserts that applying the PVM linked to a discount rate based upon ROR has resulted in negative net salvage in prior rate cases. For example, Witness Spanos testified that BGE failed to recover its net salvage costs over the service lives of its assets because the net salvage recovered through depreciation was lower than recently recorded net salvage costs.<sup>29</sup>

Columbia Gas points out that OPC Witness Garrett has testified in 15 jurisdictions and has not recommended the PVM in any jurisdiction other than Maryland.<sup>30</sup> Columbia Gas concludes that "there are serious problems with not only the use of the rate of return

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<sup>28</sup> Case No. 9610, Dunkel Rebuttal Testimony at 3 ("Thus, what Staff has filed as the Present Value net salvage rates are the BGE-calculated net salvage rates provided to Staff by BGE, with only the discount rate changed by the Staff. The Commission should not adopt below-cost net salvage depreciation rates.").

<sup>29</sup> Spanos Rebuttal at 23-24, esp. Figure 1.

<sup>30</sup> Sep. 5, 2019 Hearing Transcript at 140-141.



as the discount rate, but with the SFAS 143 Method itself.”<sup>31</sup>

### **Commission Determination**

In determining the appropriate method to calculate the net salvage component of a company’s depreciation expense, the record discusses two methods used by utilities. Under the Traditional “Straight Line” Method, an estimate of future net salvage costs is made based on an informed judgment that incorporates a statistical analysis of historical net salvage data in which net salvage is expressed as a percentage of retirements. The estimated net salvage is then allocated on a straight-line basis over the service lives of the company’s assets.

Under the PVM (SFAS-143), net salvage can be estimated in a similar manner as the Traditional Method. However, the PVM does not allocate these costs on a straight-line basis, but instead uses a deferred method of recovery based upon a discount rate.

This additional variable — the discount rate — is the issue on appeal. The Commission first adopted the PVM in 2007 and articulated the following rationale for doing so:

We will apply the Present Value Method to Pepco’s proposed service lives. The Present Value Method strikes a balance between the straight line and historical recovery proposals. It is a forward looking approach like the Straight Line Method and recovers projected costs over the life of the plant. However, because future costs are discounted to a “present value,” today’s ratepayers will pay only their fair share of recovery costs in “real” dollars rather than the inflated amounts under the Straight Line Method. In our opinion, the

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<sup>31</sup> Columbia Gas Appeal Memorandum at 7.

Present Value Method strikes an appropriate balance between the interests of current and future ratepayers. It is an approach that avoids the infirmities inherent in the proposals of OPC and the Company.<sup>32</sup>

The Commission's initial concerns about the Traditional Method were based upon a perceived generational inequity whereby inflation-adjusted amounts paid by current ratepayers would exceed the inflation-adjusted amounts paid by future ratepayers.

The record in this case presents several criticisms of the PVM, most significantly that this methodology may not accomplish the goals the Commission articulated in Case No. 9092. Parties advocate that use of the PVM causes current customers to pay less than future customers. By deferring costs to the future, the PVM may result in a lower level of accumulated depreciation and therefore a higher rate base than would occur under the Traditional Method. Therefore, although the Traditional Method might generally produce a short-term reduction in customer rates, it may cause higher total costs to ratepayers over the lives of the plant assets.

However, whatever flaws may exist in the PVM, the record in the present case provides insufficient support to deviate from the Commission's prior findings on this issue. The Commission has affirmed the company's ROR as the discount factor in multiple cases since 2007. In *In re Washington Gas Light Co.*,<sup>33</sup> the Commission considered and rejected Washington Gas' proposal that compound interest be used as the discount factor when applying the SFAS 143 Method. The Commission affirmed its prior decisions using the ROR as the discount factor, stating:

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<sup>32</sup> 98 Md. PSC 228, 251.

<sup>33</sup> 101 Md. PSC 38 (2010).

We have reviewed the record and we affirm the methodology for accruing future net salvage adopted in the Proposed Order. We start from the premise, articulated in Case No. 9092, that the Present Value Method properly allocates the fair share of costs to today's ratepayers and thus we prefer it to the historical Straight Line Method.<sup>34</sup>

Similarly, in *In re Baltimore Gas and Electric Company*,<sup>35</sup> the Commission concluded that

[W]e are not persuaded by BGE's 'evidence' that the Compound Interest Method would render a superior result. Rather for the reasons articulated by Staff and OPC, including the fact that other entities such as the FASB and FERC have adopted the Present Value Method, we hold that this is the appropriate method.<sup>36</sup>

Several subsequent cases have affirmed these holdings.<sup>37</sup> In the present case, both Staff and OPC presented witness testimony that supported the continuation of the PVM. Staff Witness Garrett testified that applying the traditional method in this case would result in more than \$1 million of additional costs per year to customers.<sup>38</sup> Witness Garrett further testified that "[c]urrent customers are future customers from a past perspective, and they are clearly still benefitting from application of the PV Method."<sup>39</sup> Similarly, Staff Witness Patterson testified that "a discount rate equal to the cost of money to the utility enables today's ratepayers to pay their fair share of recovery costs in real dollars rather than inflated amounts..."<sup>40</sup>

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<sup>34</sup> *Id.* at 42.

<sup>35</sup> 101 Md. PSC 89 (2010).

<sup>36</sup> 101 Md. PSC at 94.

<sup>37</sup> *See e.g. In re Columbia Gas of Md.*, 104 Md. PSC 487, 519 (2013) (affirming the language in the Proposed Order: "I reject the Company's present value methodology calculation because it uses a 2.5 % discount rate rather than a discount rate approximately equivalent to the Company's existing overall rate of return, which has been the discount rate methodology approved by the Commission in prior cases."); *In re Washington Gas Light Co.*, 109 Md. PSC 795, 804-805 (2018) (citing Staff Witness Valcarengi: "[t]he methodology used by Staff ... is precisely the same used in the development of depreciation rates for every major gas and electric utility in Maryland since the advent of present value calculations several years back.").

<sup>38</sup> Garrett Surrebuttal at 5.

<sup>39</sup> *Id.*

<sup>40</sup> Surrebuttal Testimony of Felix L. Patterson at 3.

By contrast, little in the record supports a 2.5 percent discount rate. Witness Spanos testified:

Q: Why have you shown a 2.50% inflation rate as a comparison?

A: The 2.50% is more in line with forecasts of future inflation. Given that the justification for the SFAS 143 Method is based on inflation, in my opinion a 2.50% discount rate would be far more appropriate than the 7.32% that Staff has recommended or the 6.91% that Mr. Garrett has recommended.<sup>41</sup>

However, the record otherwise does not support this percentage. Neither the Bureau of Labor Statistics referenced by Staff<sup>42</sup> nor the Congressional Budget Office Long-Term Budget Outlook referenced by OPC are in the record before the Commission.<sup>43</sup> The record contains no data on historical inflation to support Columbia Gas' assertion that 2.5 percent is a reasonable forecast. Nor does the record contain any forecasts of inflation, even though such forecasts are readily available. The Proposed Order explicitly observes this omission:

In a future proceeding, it would behoove the parties to present evidence, citing authority if possible, as to the appropriate discount rate to account for inflation as the Commission intended, including evidence of inflation and risk-free rates and whether the Company has asset retirement obligations recorded on its books.<sup>44</sup>

Although Columbia Gas argued that BGE had failed to fully recover its net salvage costs based upon the PVM, there is no evidence in this record that Columbia Gas has ever incurred a negative net salvage value using the Company's ROR as the discount factor. To

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<sup>41</sup> Spanos Rebuttal at 65.

<sup>42</sup> Staff Appeal Memorandum at 5.

<sup>43</sup> OPC Appeal Memorandum at 7.

<sup>44</sup> Proposed Order at 34, fn 155.

the contrary, Witness Spanos testified that Columbia Gas had never faced such a shortfall.<sup>45</sup>

Accordingly, the Commission concludes that there is insufficient evidence on which to rely to deviate from prior precedent. The Commission therefore reverses and finds that Columbia Gas' discount rate should be adjusted to 7.26 percent to reflect its approved ROR.<sup>46</sup>

## **B. Post-Hearing Rate Case Expenses**

### *1. Staff*

Staff also contends that the Proposed Order wrongly approves rate case invoices that were submitted after the hearing. The Proposed Order approves recovery of rate case expenses in the amount of \$78,306.<sup>47</sup> However, Staff argues that only \$19,711 was documented with invoices provided to the parties prior to the September 19-20, 2019 hearing. The remainder of the documentation was not provided until October 1, 2019, 11 days *after* the September 19-20 hearing. The Proposed Order approves recovery of these additional expenses by noting that “a company cannot submit an invoice before the end of a hearing [that the Company] is simultaneously attending.”<sup>48</sup>

In support of its contention that recovery of post-hearing expenses should be rejected, Staff cites the Commission's decision in Case No. 9443, which stated that:

[I]n accordance with our past decisions on this matter, that the submission of actual costs by the end date of the evidentiary hearing is consistent with the regulatory principle of allowing costs that are known and measurable. ...[A]dhering to the principle of allowing recovery only of known and measurable and prudently incurred costs

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<sup>45</sup> Spanos Rebuttal at 24.

<sup>46</sup> This determination is without prejudice to parties in future cases proposing a fully-supported PVM discount rate that is supported by expert testimony of inflation rate forecasts.

<sup>47</sup> Proposed Order at 13-16.

<sup>48</sup> Proposed Order at 16.

outweighs the risk that some bills may not be submitted in time.<sup>49</sup>

Although the Proposed Order notes that Staff did not challenge these post-hearing invoices, Staff contends that their untimely nature prevents the opportunity for discovery into their reasonableness and renders a challenge impossible.

## 2. *Columbia Gas*

Columbia Gas contends that the PULJ properly approved recovery of its rate case expenses, including those invoices submitted after the evidentiary hearing. Columbia Gas noted that the PULJ explicitly kept the record open until October 1, 2019, because Columbia Gas had stated that it would submit additional invoices incurred during September.<sup>50</sup> Columbia Gas distinguishes the Pepco cases on which Staff relies (Case Nos. 9443 and 9602) by relying upon language in Case No. 9286, in which the Commission allowed recovery of expenses similar to the expenses at issue here.

### **Commission Determination**

The Proposed Order approved rate case expenses in the amount of \$78,306.<sup>51</sup> Of this amount, Columbia Gas submitted supportive invoices for \$58,595 on October 1, 2019, 11 days after the end of the hearings. In allowing recovery for these additional expenses, the PULJ relied upon language in the Commission's decision in Case No. 9286. In that case, the Commission issued a bench data request following the hearings, and Pepco updated its actual expenses through the reply briefs.<sup>52</sup> The PULJ concluded that this prior

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<sup>49</sup> *In Re Pepco*, 108 Md. PSC 651, 667 (2017).

<sup>50</sup> Sep. 5, 2019 Hearing Transcript at 36.

<sup>51</sup> Proposed Order at 13-16. The PULJ's decision to disallow the \$14,678 cost of the Depreciation Study performed by Gannett Fleming is not before the Commission on appeal.

<sup>52</sup> *Re Potomac Electric Power Company*, 103 Md. PSC 293, 311 (2012).

case reflected “some flexibility” in this area.<sup>53</sup>

On September 20, 2019, the final day of the hearing in this case, the PULJ issued a Bench Data Request, stating that “I think the record should reflect how much was spent on that depreciation study and whether that’s in this rate case or not. I’d appreciate that clarification.”<sup>54</sup> In response to this request, Columbia Gas submitted its Response to Bench Data Request 1-008, which included support for the disputed expenses.<sup>55</sup> Additionally, toward the close of the hearing, counsel for Columbia Gas indicated that it would submit its actual invoice for September services rendered “at the end of this month or very early in October.”<sup>56</sup> The PULJ then stated that the record would remain open until October 1, 2019.<sup>57</sup> Columbia Gas thereafter submitted the disputed invoices within the time frame requested by the PULJ. In fact, witnesses for both OPC and Staff testified that Columbia Gas should recover its expenses through the hearings in this case.<sup>58</sup> No party raised any issue regarding the amount of the Company’s post-hearing invoices.

As the PULJ noted, “Staff had time to review such supporting documentation and present any appropriate argument as to whether Columbia Gas had properly supported the amounts claimed...”<sup>59</sup> Staff did not dispute any of the submitted invoices, except for the depreciation study which the PULJ disallowed. Under these circumstances, the Commission concludes that it would be unfair to prevent recovery for expenses that were

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<sup>53</sup> Proposed Order at 16.

<sup>54</sup> Sep. 5, 2019 Hearing Transcript at 36-37.

<sup>55</sup> Maillog 226995 at 14.

<sup>56</sup> Sep. 5, 2019 Hearing Transcript at 36.

<sup>57</sup> *Id.* at 37.

<sup>58</sup> Direct Testimony of Yulia Poberesky at 13 (“Staff recommends that the Commission allow Columbia to include actually incurred expense only through the hearings in this rate case.”); OPC Witness Morgan Surrebuttal at 6 (“If this proceeding ends up being fully litigated, I recommend that the Company be allowed to update its rate case expense up to an actual amount not exceeding its initial request.”).

<sup>59</sup> Proposed Order at 16.

submitted pursuant to the PULJ's request within a reasonable time following the conclusion of the hearing and while the evidentiary record was held open, without objection from any party.

### **C. Cassidy Property – Environmental Remediation Expense**

#### *1. OPC*

OPC also appeals the PULJ's decision to authorize full rate recovery for the environmental remediation costs associated with the Cassidy Property located in Hagerstown, Maryland. Relying upon PUA § 4-211(a)(1), OPC contends that the land in question must have been previously used to provide service to gas customers for the remediation costs to be recoverable. Because approximately 30 percent of the Cassidy Property was never used for the provision of gas service, OPC contends that Columbia Gas' recovery for remediation costs should be reduced by that same percentage.<sup>60</sup>

OPC concedes that the Commission has previously addressed the issue of recovery for remediation costs related to the Cassidy Property in Case No. 9480.<sup>61</sup> Nonetheless, OPC repeats the arguments it made in that case. Specifically, OPC contends that PUA § 4-211 only permits recovery of environmental remediation related to that portion of the Cassidy Property that was previously used to provide gas service to customers.

#### *2. Columbia Gas*

Columbia Gas rejects OPC's argument that PUA § 4-211 does not apply to a portion of the Cassidy Property in Hagerstown, Maryland. Columbia Gas notes that the

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<sup>60</sup> OPC obtains the 30 percent figure from 11 of the Direct Testimony of Lafayette K. Morgan, Jr., at attached Columbia Gas Response to OPC Data Request 10-001.

<sup>61</sup> *In re Columbia Gas of Maryland, Inc.*, 790 Md. PSC 790 (2018). OPC has appealed Order No. 88923 to the Court of Special Appeals, and oral argument is scheduled for April 2020.



Commission has addressed this precise issue regarding the same parcel of land in Case No. 9480, and OPC has appealed this issue to the Court of Special Appeals.<sup>62</sup> Columbia Gas contends that OPC is asking the Commission to reverse its own prior decision even as that decision is pending on appeal.

### **Commission Determination**

The Proposed Order properly rejected OPC's contention that PUA § 4-211(a)(1) applies only to that portion of the Cassidy Property that previously provided gas service to Columbia Gas customers.<sup>63</sup> The Commission has expressly ruled on this issue in Case No. 9480. In that case, the Chief PULJ correctly framed this issue, which the Commission and the Circuit Court for Baltimore City subsequently affirmed, as follows:

PUA § 4-211(a)(1)(ii) only requires the "real property" to have been previously used to provide service, directly or indirectly, to manufactured gas customers. The fact that the original 2.5-acre parcel is now part of a larger property than it was when owned by Columbia's predecessor is irrelevant based upon the language of the statute. Additionally, the spread of the contamination is directly linked to the tar pond, and thus the contamination beyond the 2.5 acres is indirectly linked to manufactured gas service previously provided to HGC's customers. Therefore, given the lack of any statutory limitations on "real property", I find the requirements of PUA §4-211(a)(1)(i-ii) have been satisfied.<sup>64</sup>

The Commission affirmed this decision in Order No. 88923. OPC then appealed that decision to the Circuit Court for Baltimore City, which affirmed the Commission's decision

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<sup>62</sup> Case No. 9480, Proposed Order at 48 (Maillog 222363); affirmed *In re Columbia Gas of Maryland, Inc.*, 109 Md. PSC 790 (2018); appealed to Circuit Court for Baltimore City, Case No. 24-C-18-006881 (affirmed May 21, 2019); appealed to the Court of Special Appeals: 2019 Term, Case No. 0789.

<sup>63</sup> Proposed Order at 41-43.

<sup>64</sup> Case No. 9480, Proposed Order at 48.

on May 21, 2019.<sup>65</sup> OPC has since appealed the Circuit Court’s decision to the Court of Special Appeals, where it is currently pending. For the purposes of the present case, OPC provides no basis upon which to deviate from the Commission’s previous ruling on this issue. The Proposed Order’s determination on environmental remediation expense is affirmed.

For the reasons set forth herein, the Proposed Order in this matter is hereby affirmed in part and reversed in part.

**IT IS THEREFORE**, this 18<sup>th</sup> day of December, in the year Two Thousand and Nineteen, by the Public Service Commission of Maryland,

**ORDERED:** (1) That the November 5, 2019 Proposed Order is hereby Affirmed as to its findings related to recovery of Columbia Gas’ costs associated with its rate case and its environmental remediation of the Cassidy Property;

(2) That the November 5, 2019 Proposed Order is Reversed as to its findings regarding the proper discount rate to calculate Columbia Gas’ net salvage costs. The proper discount rate should be 7.26 percent, to reflect its approved Rate of Return; and

(3) That the Company is directed to file clean tariff pages in compliance with this Order within thirty (30) days of the date of this Order.

*/s/ Jason M. Stanek*  
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*/s/ Michael T. Richard*  
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*/s/ Anthony J. O’Donnell*  
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*/s/ Odogwu Obi Linton*  
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*/s/ Mindy L. Herman*  
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Commissioners

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<sup>65</sup> Case No. 24-C-18-006881.